immediate action was required are automatically stayed upon the timely filing of an appeal.

The amendment also would have clarified how the Departmental rule at § 4.21 would have been applied and the amount of grazing use that would be allowable when a decision has been stayed. Where an appellant had no authorized grazing use the preceding year, the authorized grazing use would have been required to be consistent with the decision pending a final determination on appeal. Appellants affected by this provision would have included persons that are applicants for permit or lease transfers. Where a decision proposed to change the amount of authorized grazing use, the permitted grazing use would not have exceeded the appellant's previously determined permitted use during the time an appeal is pending. Reference to ephemeral use would have been added to the amendments which would have pertained to levels of use pending determination on appeal. This amendment would also have provided for making decisions effective upon issuance or on a date specified in the decision when necessary to protect the rangeland resources or to facilitate abatement of unauthorized use by closing an area to grazing use under §§ 4110.3–3 and 4150.2 of this part. These provisions are being adopted as proposed, with minor changes to add references to annual rangeland and OHA and to clarify that the proposed term ''previously permitted use'' means ''authorized use in the last year during which any use was authorized.''

Many comments addressed the proposed change to conform the grazing appeals process with the general appeals provisions of the Department. Some comments supported the changes, while others reflected the same concern expressed in response to § 4160.1, above. Responses to those comments are not repeated here.

Some commenters questioned if the change would provide sufficient procedural protections for the permittee or lessee, and add to the number of stays sought from OHA. Other commenters questioned the authorized officer's discretion to make a decision effectively immediately; whether stay provisions would apply; whether the stay process was in conflict with the factual hearing process; and whether decisions should be placed in immediate effect only if ''required for the orderly administration of the range or for the protection of other resource values.''

It is the Department's intent in making the grazing appeals process consistent with the Department's general appeals process to put decisions in place in a timely manner unless OHA grants a stay. The amendments adopted by today's action preserve the ability to file an administrative appeal and a petition to stay a final decision. The stay provision allows OHA to determine if it is appropriate to stay all or a portion of a final decision.

The rule adopted today provides for two separate mechanisms for the issuance and appeal of decisions: (1) Making decisions effective at the end of a 30-day appeal period and, if a petition for stay is filed, upon any denial of the petition but not later than 75 days from the date of the decision, or (2) making decisions effective upon issuance or on a date specified in the decision to stop or prevent imminent damage to resources, in accordance with the standards set forth in §§ 4110.3–3(b) and 4150.2(d). The first mechanism is expected to serve as the usual way in which decisions will be made. Making decisions effective during the 30 day appeal period will be reserved for situations where immediate action is needed to protect rangeland resources or to abate unauthorized use, in accordance with the standards set forth herein.

The rules governing the consideration of petitions to stay a decision pending appeal are provided at 43 CFR 4.21(b)(i) through (iv), and are not changed by this rulemaking. The standards are (i) the relative harm to the parties if the stay is granted or denied; (ii) the likelihood of the appellant's success on the merits; (iii) the likelihood of immediate and irreparable harm if the stay is not granted; (iv) whether the public interest favors granting the stay. As it does currently, BLM will make available to involved persons the required components of an appeal and petition to stay a decision at the time a final decision is issued. A party will not have to choose between a hearing or seeking a stay. A hearing before an administrative law judge will review the facts associated with an appeal, while OHA will consider stay petitions consistent with the standards at 43 CFR 4.21(b)(1).

In the case of decisions under §§ 4110.3–3(b) and 4150.2(d), the Department has concluded that the rule and BLM Manual provide sufficient guidance to the authorized officer. For this reason, the Department has not adopted the suggestion to place decisions in effect immediately only if ''required for the orderly administration of the range or the protection of other resource values.'' As discussed above, the Department has concluded that this authority is needed to stop or prevent imminent damage to rangeland resources or to abate unauthorized use. The amendments adopted today may result in an increased number of stay petitions, but this is balanced by the benefits of making the grazing appeals process consistent with the general Departmental process.

Section 4160.4 Appeals

Under the proposed rule, this section would have provided instructions regarding the filing of appeals and petitions to stay decisions. When a final decision is issued, all parties whose interests have been adversely affected would have been able to file an appeal and a petition for stay of the decision within 30 days from the date of receipt of a final decision, or 30 days from the date a proposed decision becomes final in the absence of a protest. Under the process of § 4.21 of this title, the OHA is allowed 45 days from the end of the appeal period to review the petition and issue a determination. Under the proposal, a decision would not have been in effect during the consideration of a petition for stay unless it were made effective for reasons under § 4110.3–3(b) or 4150.2(d). The provision would have included a requirement for prompt transmittal by the authorized officer of appeals and petitions for stay to the OHA. These provisions are being adopted as proposed.

Comments filed on this section suggested alternative time limits and questioned if the amendments would encourage appeals by the interested public. Commenters also inquired whether there should be a presumption of grazing use when an applicant had no grazing use the preceding year.

The Department has not adopted the suggestion that the time for appeal or OHA review of petitions for stay should be expanded or limited. Past experience with the timing periods for appeals and stays has indicated that these timing requirements are reasonable. A permittee or lessee will almost always be aware of impending implementation of a decision before the final decision is issued. In addition, except for some cases that require that decisions be placed in immediate effect, the permittee or lessee is provided with a proposed decision, which may be protested, at least 15 days before a final decision is issued. It is the Department's intent in involving the interested public at early stages to reduce the number of protests and appeals because all of the parties will have an understanding of the factors considered in issuing a decision.

The Department has not adopted the view that applicants without grazing use