

Dated: April 9, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority : 21 U.S.C. 346a and 371.

2. In § 180.495, paragraphs (a) and (b) are revised to read as follows:

§ 180.495 Spinosad; tolerances for residues.

(a) *General.* Tolerances are established for residues of the insecticide Spinosad. Factor A is 2-[(6-deoxy-2,3,4-tri-*O*-methyl- α -*L*-manno-pyranosyl)oxy]-13-[[5-(dimethylamino)-tetrahydro-6-methyl-2*H*-pyran-2-yl]oxy]-9-ethyl-2,3,3a,5a,5b,6,9,10,11,12,13,14,16a,6b-tetradecahydro-14-methyl-1*H*-as-Indaceno[3,2-*d*]oxacyclododecin-7,15-dione. Factor D is 2-[(6-deoxy-2,3,4-tri-*O*-methyl- α -*L*-manno-pyranosyl)oxy]-13-[[5-(dimethylamino)-tetrahydro-6-methyl-2*H*-pyran-2-yl]oxy]-9-ethyl-2,3,3a,5a,5b,6,9,10,11,12,13,14,16a,16b-tetradecahydro-4,14-dimethyl-1*H*-as-Indaceno[3,2-*d*]oxacyclododecin-7,15-dione.

Commodity	Parts per million
Milk, fat	0.5
Milk, whole	0.04
Sheep, fat	0.6
Sheep, mby	0.2
Sheep, meat	0.04

(b) *Section 18 emergency exemptions.*
[Reserved]

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 4700

[NV-960-1060-00-24-1A]

RIN 1004-AD28

Wild Horse and Burro Adoptions; Power of Attorney

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Land Management is amending its regulations to prohibit anyone from adopting wild horses and burros on behalf of another person using a written authorization to act as that person's agent or attorney (power of attorney). This action is necessary to implement a portion of a court-approved settlement agreement between BLM and the Animal Protection Institute of America, Inc. The effect of this action is to eliminate the potential for adopters to misuse the power of attorney to obtain large numbers of wild horses and burros for commercial sale.

DATES: This rule is effective May 15, 1998.

FOR FURTHER INFORMATION CONTACT: Bud Cribley, (202) 452-5073; or Lili Thomas, (702) 785-6457.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Discussion of the Final Rule and Response to Comments
- III. Procedural Matters

I. Background

In 1971, Congress passed legislation to protect, manage, and control wild horses and burros on the public lands. The Wild Free-Roaming Horses and Burros Act (WHA) declared these animals to be "living symbols of the historic and pioneer spirit of the West."

Pub. L. 92-195, section 1, 85 Stat. 649 (1971) (current version at 16 U.S.C. 1331 (1994)). Congress further declared that all wild free-roaming horses and burros are under the jurisdiction of the Secretary of the Interior for the purpose of management and protection, and that the Secretary shall manage them in a manner that is designed to achieve and maintain a thriving natural ecological balance on the public lands. 16 U.S.C. 1333(a). Section 3(b) of the WHA authorized the Secretary, where an area is found to be overpopulated, to cause additional excess wild free-roaming horses and burros to be captured and removed for private maintenance under humane conditions and care. Congress also authorized the Secretary to issue such regulations as the Secretary deems necessary to further the purposes of the law. 16 U.S.C. 1336.

The WHA protected wild horses and burros so well that within a few years their numbers exceeded the carrying capacity of the Western rangelands and posed a threat to wildlife, livestock, and the improvement of range conditions. To correct this problem, in 1978, Congress passed amendments to the WHA as part of the Public Rangelands Improvement Act. Pub. L. 95-514, section 14, 92 Stat. 1803, 1808 (1978) (current version at 16 U.S.C. 1333(b)-(d)). The amendments sought to facilitate humane adoption of excess animals by allowing adopters to take title to up to 4 animals per year after having successfully cared for them for one year. 16 U.S.C. 1333(c). Under the amendments, individuals can adopt (but not take title to) more than 4 animals per year if the Secretary finds they can humanely care for more than four. 16 U.S.C. 1333(b)(2)(B).

To carry out this mandate, the Secretary, acting through BLM, issued regulations governing, among other things, the adoption process and who is eligible to adopt animals removed from the public lands. These regulations were proposed in 1984 (49 FR 49252, December 18, 1984) and adopted in 1986 (51 FR 7410, March 3, 1986). See 43 CFR part 4700 (1997). The 1986 regulations limited adoptions to four animals per year per person, but also allowed a person to adopt animals on behalf of another person through the use of a power of attorney. A power of attorney is a written document that authorizes one person to act as an agent or attorney for another. Under the existing regulations, one agent could get powers of attorney from several people and adopt more animals than any one person is allowed to adopt.

As discussed in the proposed rule, several investigations of adopters of

Commodity	Parts per million
Almonds	0.02
Almond hulls	2.0
Apples	0.2
Apple pomace, wet	0.5
Brassica (cole), leafy vegetables, greens subgroup	10.0
Brassica (cole), leafy vegetables, head and stem subgroup	2.0
Cattle, fat	0.6
Cattle, mby	0.2
Cattle, meat	0.04
Citrus fruits group	0.3
Citrus oil	3.0
Citrus pulp, dried	0.5
Cotton gin byproducts	1.5
Cottonseed	0.02
Fruiting vegetables (except cucurbits) group	0.4
Goat, fat	0.6
Goat, mby	0.2
Goat, meat	0.04
Hogs, fat	0.6
Hogs, mby	0.2
Hogs, meat	0.04
Horses, fat	0.6
Horses, mby	0.2
Horses, meat	0.04
Leafy vegetables (except Brassica vegetables) group	8.0

large numbers of animals through power of attorney indicate that individuals have obtained large numbers of animals to sell them for profit. In some cases, the investigations have found that adopted animals have been held in substandard, if not inhumane, conditions awaiting transfer of title from BLM to the adopters of record and subsequent sale or slaughter. While BLM was working on a proposal to address this potential for abuse, the Animal Protection Institute of America, Inc. (API) initiated legal action concerning a number of issues related to the adoption program. As a result, BLM and API entered into a settlement agreement in October 1997 that, among other things, requires BLM to propose a regulation eliminating the use of powers of attorney in the adoption program.

On November 10, 1997, BLM published a proposed rule in the **Federal Register** that would have revised existing paragraph 43 CFR 4750.3-3(b) to read, "The Bureau of Land Management will not allow the use of a power of attorney for the adoption of wild horses and burros." 62 FR 60467. The proposal would also have deleted existing paragraph 43 CFR 4750.3-3(c) which outlined the information that a person holding a power of attorney and adopting more than four animals had to provide. By proposing to specifically disallow use of power of attorney in paragraph (b), the proposal rendered the information requirements in paragraph (c) superfluous. As discussed in the proposed rule, the intent of these changes was to eliminate the use of power of attorney.

The 60-day comment period closed on January 9, 1998. BLM received 12 comment letters and electronic mail messages. Seven of the comments were from representatives of animal-advocacy organizations; the other five came from individuals, one of whom identified herself as an individual adopter. Ten of the comments were supportive of the proposal; two of these offered specific changes to the proposed text. Two comments, both from individuals, disagreed with the proposal. See the discussion of comments in the next section.

II. Discussion of Final Rule and Response to Comments

A. Legal Basis for the Final Rule

The Wild Free-Roaming Horses and Burros Act, as amended, authorizes the Secretary of the Interior to issue such regulations as the Secretary deems necessary to further the purposes of the law. 16 U.S.C. 1336. The law also

provides that excess animals be removed for private maintenance and care (adoption) provided that the Secretary can assure humane treatment and care. 16 U.S.C. 1333(b)(2)(B). The final rule adopted today is narrowly focused on ensuring that adopted animals receive humane treatment and care. The use of power of attorney to adopt large numbers of animals has been shown in specific cases to result in either mistreatment of the animals or abuse of the adoption program for the purpose of profiting from the sale of adopted animals, or both. These outcomes are clearly inconsistent with the spirit and intent of the Wild Free-Roaming Horses and Burros Act, as amended. To prevent these outcomes from occurring again in the future, BLM believes that its regulations should be changed, and the final rule adopted today is consistent with that position. BLM is adopting changes to its regulations that will prevent specific results while avoiding, to the extent possible and foreseeable, unintended negative impacts on legitimate individual adopters of wild horses and burros. Based on BLM's analysis of the issues involved, taking into account the purposes of the statutes and the administrative record of this rulemaking, including comments received from the public, this final rule is a proper and reasonable interpretation of the Wild Free-Roaming Horses and Burros Act.

B. General Comments

Ten commenters supported the proposal because, in their view, it would:

- Reduce abuse of animals after adoption,
- Eliminate an opportunity for monetary gain from adoptions,
- Prevent illegal profit from animals,
- Prevent adoption of large numbers of animals for commercial gain,
- Reduce BLM's costs for compliance inspections,
- Remove the incentive to adopt for commercial purposes,
- Prevent misuse of the program,
- Enable BLM to visit all adopters,
- Prevent the slaughter of animals, and
- Ensure successful adoptions.

BLM generally agrees with these comments.

Two commenters disagreed with the proposal. One did not state a reason for her disagreement. The other asserted that the proposal amounted to only a trivial correction of the regulations and proposed a number of changes to other provisions of the existing regulations. BLM does not agree that the proposal

was trivial. Elimination of the use of power of attorney in the adoption program is a significant change to regulations that have been in place for over a decade. As discussed above and in the proposed rule, this change eliminates a significant potential for abuse of the program.

BLM has decided not to adopt the other changes suggested by the commenter at this time. Under the Administrative Procedures Act, an agency must publish notice of a proposed rulemaking in the **Federal Register**, including "either the terms or substance of the proposed rule or a description of the subjects and issues involved." 5 U.S.C. 553(b). The November 10, 1997 proposal only addressed the issue of use of power of attorney in the adoption program. Thus, the public did not have notice and opportunity to comment on other aspects of the program addressed by this commenter, such as when BLM should allow title to an animal to pass to an adopter. The specific changes recommended by the commenter pertain to issues outside the scope of the proposal. Therefore, it would not be proper for BLM to adopt those changes at this time. However, BLM has taken the commenter's recommendations under advisement and may, in the future, initiate a rulemaking that addresses those issues.

C. Specific Comments

One commenter suggested that in cases where a person would have to travel a long distance to the site of an adoption facility, it would be convenient to allow that person to use a power of attorney. The commenter suggested limiting the potential for abuse by allowing power of attorney "to be used for one person for one horse (or burro)." BLM has decided not to adopt this suggestion because it would not eliminate the potential for abuse. Elimination of use of power of attorney for adoption essentially limits qualified adopters to those individuals who are willing and able to travel to the adoption location. Adopting a horse or burro is a serious endeavor that entails a significant commitment of time and money. BLM does not believe that having to travel to the adoption location will be a hindrance to those who are undertaking the larger commitment to humane care and treatment.

One commenter suggested adding to the proposal language that would preclude, in addition to power of attorney, "any other instrument or writing authorizing another person to act as an agent." The intent of the change is to clarify that no document in

which one person gives authority to another to act as an agent, whether or not it is styled "power of attorney," will be acceptable for purposes of adoption of wild horses and burros. BLM has decided to accept this clarification. Consequently, the final rule provides that, "[BLM] will not allow the use of a power of attorney or any other instrument or writing authorizing one person to act as an agent for another in the adoption of wild horses and burros."

III. Procedural Matters

National Environmental Policy Act

BLM has prepared an environmental assessment (EA) and has found that this final rule will not constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C). BLM has placed the EA and the Finding of No Significant Impact (FONSI) on file in the BLM Administrative Record, Room 401, 1620 L Street, NW, Washington, D.C. To obtain a copy, please contact one of the individuals listed under **FOR FURTHER INFORMATION CONTACT**.

Paperwork Reduction Act

This rule does not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Regulatory Flexibility Act

Congress enacted The Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. This final rule is a technical change to the wild horse and burro adoption regulations to preclude use of power of

attorney for adoptions. The rule will prevent some individuals from adopting wild horses and burros if the individuals are unable to travel to the adoption location, select the animals for adoption, and sign the private maintenance and care agreement. However, the power of attorney adoption was used only 12 times in 1997. Therefore, BLM has determined under the RFA that this final rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

Revision of 43 CFR part 4700 will not result in any unfunded mandate to State, local, or tribal governments in the aggregate, or to the private sector, of \$100 million or more in any one year.

Executive Order 12612

The final rule will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, BLM has determined that this final rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12630

The final rule does not represent a government action capable of interfering with constitutionally protected property rights. Therefore, the Department of the Interior has determined that the rule would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 12866

According to the criteria listed in section 3(f) of Executive Order 12866, BLM has determined that the final rule is not a significant regulatory action. As

such, the final rule is not subject to Office of Management and Budget review under section 6(a)(3) of the order.

Executive Order 12988

The Department of the Interior has determined that this rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Author

The principal author of this final rule is Patrick W. Boyd, Regulatory Affairs Group, Bureau of Land Management, 1849 C Street, NW., Washington, DC 20240; Telephone: (202) 452-5030.

List of Subjects in 43 CFR Part 4700

Animal welfare, Horses, Penalties, Public lands, Range management, Reporting and recordkeeping requirements, Wildlife.

Dated: April 8, 1998.

Sylvia V. Baca,

Deputy Assistant Secretary—Land and Minerals Management.

Accordingly, BLM proposes to amend 43 CFR part 4700 as set forth below:

1. The authority citation for part 4700 continues to read as follows:

Authority: 16 U.S.C. 1331-1340; 18 U.S.C. 47; 43 U.S.C. 315 and 1740.

2. Amend § 4750.3-3 by revising paragraph (b) to read as follows and by removing paragraph (c):

§ 4750.3-3 Supporting information and certification for private maintenance of more than 4 wild horses or burros.

* * * * *

(b) The Bureau of Land Management will not allow the use of a power of attorney or any other instrument or writing authorizing one person to act as an agent for another in the adoption of wild horses and burros.

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