

# DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Health Resources and Services Administration

### 45 CFR Part 60

RIN: 0906-AA42

### National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners: Charge for Self-Queries

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This Notice of Proposed Rulemaking (NPRM) proposes an amendment to the existing regulations implementing the Health Care Quality Improvement Act of 1986, which established the National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners (the Data Bank). The proposed regulations would amend the existing fee structure so that the Data Bank can fully recover its costs, as required by law. This proposed rule would give the Data Bank the authority to charge for self-queries and, therefore, assess costs in an equitable manner.

The data Bank will continue its current practice of sending a copy—automatically, without a request, and free of charge—of every record to the practitioner, in whose name it was submitted, for purposes of verification and dispute resolution.

**DATES:** Comments on this proposed rule are invited. To be considered, comments must be received by May 26, 1998.

**ADDRESSES:** Written comments should be addressed to Neil Sampson, Acting Associate Administrator, Bureau of Health Professions (BHP), Health Resources and Services Administration Room 8-05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. All comments received will be available for public inspection and copying at the Office of Research and Planning, BHP, Room 8-67, Parklawn Building, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

**FOR FURTHER INFORMATION CONTACT:** Mr. Thomas C. Croft, Director, Division of Quality Assurance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8A-55, 5600 Fishers Lane, Rockville, Maryland 20857; telephone: (301) 443-2300.

**SUPPLEMENTARY INFORMATION:** The Health Care Quality Improvement Act of

1986 (the Act), Title IV of Pub. L. 99-660, enacted November 14, 1986, authorized the establishment of the National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners (the Data Bank). Regulations implementing the Data Bank are codified at 45 CFR part 60.

Section 426(b)(4) of the Act, as amended, authorizes the Secretary to charge fees for disclosure of information (user fees). The Department of Health and Human Services Appropriations Act, 1997, Title II of Pub. L. 104-863, enacted September 30, 1996, gives the Data Bank the authority to recover its full cost of operations through user fees. No taxpayer funds are used to operate the Data Bank. Title II of Pub. L. 104-863 states:

That in addition to fees authorized by section 427(b) of the Health Care Quality Improvement Act of 1986, fees shall be collected for the full disclosure of information under the Act sufficient to recover the full costs of operating the National Practitioner Data Bank, and shall remain available until expended to carry out that Act: \* \* \*

Section 60.12(a) of the regulations, entitled "*Fees applicable to requests for information*," cover the Data Bank's authority to charge a fee for all requests for information other than those by individual health care practitioners requesting information concerning themselves (self-queries). Section 60.12(a) states:

(a) *Policy on Fees.* The fees described in this section apply to all requests for information from the Data Bank, other than those of individuals for information concerning themselves.

During 1996, the volume of self-queries has dramatically increased. The Data Bank is currently processing 1,500 self-queries a week, with no cost to the practitioners requesting the information. The volume of self-queries is expected to remain at this level or increase even further. It is estimated that the cost of processing self-queries last year exceeded \$500,000. When the current regulations exempted self-queries from the Data Bank's fee structure, the large volume of self-queries and the associated processing costs were not anticipated.

A review by the Department indicates that many organizations which are not mandated by law to query the Data Bank (e.g., State Boards and other entities) are requiring practitioners to self-query and submit the results along with their applications for licensure/re-licensure, or membership. The Department recognizes that the purpose of these self-

queries is not about practitioners' exercising their Privacy Act rights to access to information about themselves. Based on conversations with practitioners who call for self-query assistance, few, if any, are exercising their Privacy Act rights. Instead they are acting under duress and in response to demands from licensing bodies, and other entities. At the same time, they also expect to benefit by obtaining licenses to practice, membership or malpractice insurance. In fact, it has always been the policy and practice of the Data Bank to proactively provide a copy—free of charge—of every record to the practitioner, in whose name it was submitted, for purposes of verification and dispute resolution.

The Department recognizes and supports its obligations under the Privacy Act and its own fair information practice policies to continue to proactively provide a copy of every report it receives to the subject of the report (the practitioner) at no charge. However, if the practitioner wants the additional feature of a copy of his or her entire Data Bank file in one package, this proposed rule change would not deny the practitioner that right; it would simply charge a fee, based on cost-recovery, of providing such information.

Therefore the Department proposes to amend paragraph (a) of § 60.12 by deleting the phrase "other than those of individuals for information concerning themselves" in the first sentence. This change is intended to give the Data Bank the authority to charge practitioners a reasonable fee when they request information about themselves.

Upon issuance of the Final Rule, the Department will announce the fee for self-queries and the effective date of the change in the **Federal Register**. As with other changes, this fee will be subject to change as further costs may warrant.

### Economic Impact

Executive Order 12866 requires that all regulations reflect consideration of alternatives, of costs, of benefits, of incentives, of equity, and of available information. Regulations must meet certain standards, such as avoiding an unnecessary burden. Regulations which are "significant" because of cost, adverse effects on the economy, inconsistency with other agency actions, effects on the budget, or novel legal or policy issues, require special analysis.

The Department believes that the resources required to implement the requirement in these regulations are minimal. Therefore, in accordance with the Regulatory Flexibility Act of 1980, the Secretary certifies that these regulations will not have a significant

impact on a substantial number of small entities. For the same reasons, the Secretary has also determined that this is not a "significant" rule under Executive Order 12866.

#### Paperwork Reduction Act of 1995

The National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners regulation contains information collections which have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 and assigned control number 0915-0126. These proposed amendments do not affect the recordkeeping or reporting requirements in the existing regulations.

#### List of Subjects in 45 CFR Part 60

Claims, Fraud, Health maintenance organizations (HMOs), Health professions, Hospitals, Insurance companies, Malpractice.

Dated: May 20, 1997.

**Claude E. Fox,**

*Acting Administrator, Health Resources and Services Administration.*

Approved: December 15, 1997.

**Donna E. Shalala,**

*Secretary.*

Accordingly, 45 CFR part 60 is proposed to be amended as set forth below:

#### PART 60—NATIONAL PRACTITIONER DATA BANK FOR ADVERSE INFORMATION ON PHYSICIANS AND OTHER HEALTH CARE PRACTITIONERS

1. The authority citation for 45 CFR part 60 continues to read as follows:

**Authority:** Secs. 401-432 of the Health Care Quality Improvement Act of 1986, Pub. L. 99-660, 100 Stat. 3784-3794, as amended by sec. 402 of Pub. L. 100-177, 101 Stat. 1007-1008 (42 U.S.C. 11101-11152).

2. Section 60.12, is amended by revising the first sentence in paragraph (a) to read as follows:

#### § 60.12 Fees applicable to requests for information.

(a) *Policy on fees.* The fees described in this section apply to all requests for information from the Data Bank. \* \* \*

\* \* \* \* \*

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#### DEPARTMENT OF THE INTERIOR

#### Fish and Wildlife Service

#### 50 CFR Part 17

RIN 1018-AE87

#### Endangered and Threatened Wildlife and Plants: Proposed Threatened Status for the Plant *Gaura neomexicana* ssp. *coloradensis*

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Fish and Wildlife Service proposes to list the plant *Gaura neomexicana* ssp. *coloradensis* (Colorado butterfly plant) as a threatened species pursuant to the Endangered Species Act of 1973, as amended. *Gaura neomexicana* ssp. *coloradensis* is a short-lived, perennial herb endemic to moist soils in mesic or wet meadows of floodplain areas in southeastern Wyoming, northcentral Colorado, and extreme western Nebraska. This early to mid-seral stage species occurs primarily in habitats created and maintained by streams active within their floodplains with vegetation that is relatively open and not overly dense or overgrown. The conversion of areas with native grasses in riparian areas to agriculture, water diversions, channelization, and urban development threaten *Gaura neomexicana* ssp. *coloradensis* by changing habitat significantly enough to preclude survival of viable populations.

**DATES:** Comments from all interested parties must be received by May 26, 1998. Public hearing requests must be received by May 8, 1998.

**ADDRESSES:** Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, 4000 Morrie Avenue, Cheyenne, Wyoming 82001. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Mike Long, Field Supervisor, Wyoming Field Office (see ADDRESSES section), (telephone 307/772-2374; facsimile 307/772-2358).

#### SUPPLEMENTARY INFORMATION:

#### Background

*Gaura neomexicana* ssp. *coloradensis* was initially described as *Gaura coloradensis* by Rydberg (1904) based on material collected near Fort Collins, Colorado in 1895. Munz (1938) transferred *Gaura coloradensis* to *Gaura*

*neomexicana* and reduced it to variety *coloradensis*. This taxon is now recognized as *Gaura neomexicana* ssp. *coloradensis* (Raven and Gregory 1972).

Little is known about the historical distribution of *G. n.* ssp. *coloradensis*. Prior to 1984, no extensive documentation of the plants' range had been conducted. The plant was known from several historical (and presumably extirpated) locations in southeastern Wyoming and at least four historical (and presumably extirpated) locations in northern Colorado; and from three extant populations in Laramie County, Wyoming, and Weld County, Colorado. The total known population size was estimated in the low hundreds (Dorn 1979).

Intensive range-wide surveys from 1984-1986 resulted in the discovery or relocation of 22 populations in Wyoming, Colorado, and Nebraska containing approximately 20,000 flowering individuals (Marriott 1987). Additional surveys since 1992 have resulted in the discovery of at least two additional populations in Wyoming and Colorado (Fertig 1994; Floyd 1995b). However, at least two known populations in Wyoming and Colorado have not been relocated in recent years and may no longer be extant (Fertig 1994). The plant is currently known from 22 populations with a total population as low as 26,000 individuals; however, several of the populations may no longer exist. All known populations are within a small area in southeastern Wyoming, western Nebraska, and north-central Colorado. Two of the populations occur on F.E. Warren Air Force Base; the remaining 20 populations occur on private or State lands.

*Gaura neomexicana* ssp. *coloradensis* is a short-lived, monocarpic (flowering and bearing fruit only once), perennial herb with one or a few reddish, pubescent stems that are 50-80 centimeters (2-3 feet) tall. The lower leaves are lance-shaped with smooth or wavy-toothed margins and average 5-15 cm (2-6 inches) long, while those on the stem are smaller and reduced in number. Flowers are arranged in a branched, elongate inflorescence above the leaves.

Only a few flowers are open at any one time and these are located below the rounded buds and above the mature fruits. Individual flowers are 5-14 millimeters (.25-.5 inches) long with four reddish sepals and four white petals that turn pink or red with age. The hard, nutlike fruits are 4-angled and sessile (stalkless and attached directly at the base). Nonflowering plants consist of a stemless, basal rosette of oblong,