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. * * *

* * * * *

[FR Doc. 98–7505 Filed 3–23–98; 8:45 am]

BILLING CODE 4160–15–M

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,

hairless leaves 3–18 cm (1–7 inches) long (Marriott 1987; Fertig 1994; Fertig *et al.* 1994).

Gaura neomexicana ssp. *coloradensis* occurs on subirrigated, alluvial soils on level or slightly sloping floodplains and drainage bottoms at elevations of 1,524–1,951 meters (5,000–6,400 feet). Colonies are often found in low depressions or along bends in wide, active, meandering stream channels a short distance upslope of the actual channel. The plant requires early to mid-seral riparian habitats. It commonly occurs in communities dominated by *Agrostis stolonifera* (redtop) and *Poa pratensis* (Kentucky bluegrass) on wetter sites and *Glycyrrhiza lepidota* (wild licorice), *Cirsium flodmanii* (Flodman's thistle), *Grindelia squarrosa* (curlytop gumweed), and *Equisetum laevigatum* (smooth scouring rush) on drier sites. These areas are usually intermediate in moisture between wet, streamside communities dominated by sedges, rushes, and cattails, and dry, upland shortgrass prairie. Typical *G. n.* ssp. *coloradensis* habitat is relatively open without dense or overgrown vegetation. *Salix exugua* (sandbar willow) and *Cirsium arvense* (Canada thistle) may become dominant in areas of *G. n.* ssp. *coloradensis* habitat that are not periodically flooded or otherwise disturbed. *Gaura neomexicana* ssp. *coloradensis* typically occurs on soils derived from conglomerates, sandstones, and tuffaceous (compacted volcanic ash) mudstones and siltstones of the Tertiary White River, Arikaree, and Oglalla Formations (Love and Christiansen 1985). This type of habitat is not unusual in eastern Colorado and Wyoming.

Gaura neomexicana ssp. *coloradensis* is an early successional species (although probably not a pioneer) adapted to utilize stream channel sites that are periodically disturbed. Historically, flooding was probably the main cause of disturbances in the plant's habitat, although wildfire and grazing also may have been important. Although flowering and fruiting stems may exhibit increased mortality because of these events, vegetative rosettes appear to be little affected (Mountain West Environmental Services 1985). The establishment and survival of seedlings appears to be enhanced at sites where tall and dense vegetation has been removed by some form of disturbance. In the absence of occasional disturbance, the plant's habitat can become choked out by dense growth of willows, grasses, and exotic plants, preventing new seedlings from becoming established to replace plants that have died (Floyd 1995a; Fertig 1996).

Previous Federal Action

The January 9, 1975, report of the Secretary of the Smithsonian Institution (House Document No. 94–51) contained lists of over 3,000 United States vascular plant taxa (including *G. n.* ssp. *coloradensis*) considered candidates for the list of endangered and threatened species provided for by the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). On July 1, 1975, the Service published a Notice of Review in the **Federal Register** (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) of the Act. On June 16, 1976, the Service published a proposed rulemaking in the **Federal Register** (41 FR 24523) which included *G. n.* ssp. *coloradensis;* however, a final rule for this action was not published. The December 15, 1980, Notice of Review for Plants (45 FR 82479) included *G. n.* ssp. *coloradensis* as a Category 1 candidate species and retained that status in subsequent notice of review, published in the **Federal Register** on September 27, 1985 (50 FR 39526), February 21, 1990 (55 FR 6184), and September 30, 1993 (58 FR 51144). This species was mistakenly left out of the notice of review published November 28, 1983 (48 FR 53640). On February 28, 1996, the Service published a Notice of Review in the **Federal Register** (61 FR 7596) that discontinued the use of different categories of candidate species. Candidate species are those species for which the Service has sufficient information on file detailing biological vulnerability and threats that would support issuance of a proposed rule, but issuance of the proposed rule is precluded by other listing actions. *Gaura neomexicana* ssp. *coloradensis* was included as a candidate in the February, 1996, notice of review and retained that status in the subsequent notice of review, published in the **Federal Register** on September 19, 1997 (62 FR 49384). Processing of this proposal is a Tier 3 activity under the current listing priority guidance (61 FR 64480, December 5, 1996). The listing priority assigned to the species in the latter two notices of review was a 3. This proposal is being published ahead of other species with a higher listing priority that Region 6 has the lead for because *G. n.* ssp. *coloradensis* is part of the settlement agreement in the Fund for Animals *et al.* v. Lujan *et al.* case (D.D.C. Civ. No. 92–800).

Two populations of *G. n.* ssp. *coloradensis* occur on F.E. Warren Air Force Base, Cheyenne, Wyoming. On January 18, 1982, a Memorandum of Understanding between the Service and the Base was signed to assure continued survival of the populations occurring on the Base. The agreement has been updated and signed several times since 1982. In 1990 a Research Natural Area was established to include all the known naturally occurring populations on the Base. The most recent Memorandum of Understanding between the Base, The Nature Conservancy, and the Service was signed on March 3, 1992. The agreement supported demographic studies of the *G. n.* ssp. *coloradensis* populations on the Base and provided for ongoing protective efforts. However, the agreement's duration was 5 years and it has not been revised or renewed. Discussions between the Service and the Base regarding renewal of the agreement are ongoing.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *G. n.* Woot. ssp. *coloradensis* (Rydb.) Raven and Gregory (Colorado butterfly plant) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

All but two of the currently known populations of *G. n.* ssp. *coloradensis* occur on private or State lands (mostly private) managed primarily for agriculture. Haying and mowing, water development, land conversion for cultivation, competition from exotic plants, and loss of habitat to urban growth are the main threats to the plant on these lands (Marriott 1987; Fertig 1994). On some sites, including F.E. Warren Air Force Base, habitat degradation resulting from plant succession and competition is the main threat to the long-term survival of populations. High recreational use by campers, motorists, and fishermen is a threat to populations on State park lands in Nebraska.

Conversion of moist, native grasslands to commercial croplands has been widespread throughout southeastern Wyoming and northeastern Colorado (Compton and Hugie 1993). Since many of the agricultural lands are irrigated

hay fields, mowing of *G. n.* ssp. *coloradensis* habitat for hay production has been suggested as a potential threat (Jennings *et al.* 1997). This threat can be significant if cutting occurs before the plant's fruits have ripened.

Construction of stock ponds and reservoirs has inundated and made unsuitable some *G. n.* ssp. *coloradensis* habitat. The development of irrigation canals to move water to croplands may remove moisture from occupied or potentially suitable habitat, leaving it in a drier, unsuitable condition. Additionally, the management of water resources for domestic and commercial uses, coupled with encroaching agricultural land use, has had a tendency to channelize and isolate water resources and fragment, realign, and reduce riparian and moist lowland habitat (Compton and Hugie 1993) that could otherwise serve as potential *G. n.* ssp. *coloradensis* habitat.

Residential and urban development around the cities of Cheyenne and Fort Collins has converted areas of formerly suitable *G. n.* ssp. *coloradensis* habitat. The high rate of development occurring from Colorado Springs, Colorado, to Cheyenne, Wyoming, has been cited as a continuing threat to remaining populations of the Preble's meadow jumping mouse (*Zapus hudsonius preblei*), a proposed endangered species that also occurs in riparian habitats and whose historic range overlaps much of that of *G. n.* ssp. *coloradensis* (62 FR 14093, March 25, 1997).

In nonagricultural, undeveloped areas, a significant threat to *G. n.* ssp. *coloradensis* populations is from habitat changes resulting from natural succession of the plant community. Without periodic disturbance events, the semi-open habitats preferred by this species can become choked by tall and dense growth of willows, graminoids (grasses), and exotic weeds (Fertig 1994). Natural disturbances, such as flooding, fire, and ungulate grazing, have been sufficient in the past to create favorable habitat conditions for the plant. The natural flooding regime within the species floodplain habitat has been altered by construction of flood control structures and by irrigation and channelization practices. In the absence of such natural disturbances today, managed disturbance may be necessary to maintain and create areas of habitat (Fertig 1994; 1996). However, many Federal programs, such as those administered by the Natural Resources Conservation Service, focus on enhancing/protecting riparian areas by removing the types of disturbance the plant needs and pushing the habitat into later successional stages.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Gaura neomexicana ssp. *coloradensis* is vulnerable to overcollecting conducted for scientific or educational purposes. However, no known commercial or recreational threats exist at this time.

C. Disease or Predation

There are no known diseases affecting *G. n.* ssp. *coloradensis* populations, although the species is occasionally affected by insect galls. *Gaura neomexicana* ssp. *coloradensis* is highly palatable to a variety of insect and mammalian herbivores (cattle, horses, antelope (*Antilocapra americana*), etc.), but appears to compensate for herbivory by increasing branch and fruit production. Livestock grazing can be a threat at some sites, especially when animals are not rotated or use is concentrated during the summer flowering period. Additionally, plants are occasionally uprooted or trampled by livestock and wildlife grazing in the vicinity. In at least one location where a population of *G. n.* ssp. *coloradensis* is divided by a fence, the heavily grazed side of the fence had no plants (James L. Miller, U.S. Fish and Wildlife Service, *in litt.* 1987). Observations have shown that the plant can persist and thrive in habitats that are winter grazed or managed on a short-term rotation cycle (Jennings *et al.* 1997). Although the butterfly plant itself may be grazed (it appears quite palatable to a wide range of herbivores), the reduction of competing vegetative cover allows seedlings to become more readily established.

D. The Inadequacy of Existing Regulatory Mechanisms

No Federal or State laws or regulations directly protect *G. n.* ssp. *coloradensis* or its habitat. *Gaura neomexicana* ssp. *coloradensis* is listed as Sensitive by the U.S. Forest Service, although no populations are currently known from Forest Service lands (D. Hazlett, Plants and People Consulting, pers. comm, 1994).

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The most serious threat on agricultural lands is indiscriminate use of broadleaf herbicides for the control of Canada thistle, leafy spurge (*Euphorbia esula*), and other exotic plants (Marriott 1987). The noxious weed problem in Laramie county, Wyoming, is particularly evident on F.E. Warren Air Force Base. Although competition from these species may have serious negative implications for populations of *G. n.* ssp. *coloradensis*, observations have indicated that the plant is highly susceptible to commonly used herbicides when they are applied indiscriminately. In 1983 nearly one-half of the mapped populations on F.E. Warren Air Force Base were inadvertently destroyed when sprayed with Tordon, a persistent herbicide. Additionally, herbicide use along road crossings in and adjacent to *G. n.* ssp. *coloradensis* populations has also been noted (James L. Miller, U.S. Fish and Wildlife Service, *in litt.* 1987). Biological control agents have been used at F.E. Warren Air Force Base, but have not been effective in controlling Canada thistle or leafy spurge.

In order for a population to sustain itself, there must be enough reproducing individuals and appropriate habitats to ensure its survival. It is not known if the scattered populations of *G. n.* ssp. *coloradensis* contain sufficient individuals and diversity to ensure their continued existence over the long term.

The most recent survey information for the known populations of *G. n.* ssp. *coloradensis* shows that only four large populations (with at least 3,000 or more individuals) currently exist. Only one of these occur on Federal lands. Eight populations (one of them occurring on Federal lands) are moderately sized, containing between 500 and 1,200 individuals. The remaining 10 populations are smaller, with six of these having less than 100 individuals. The danger to these small populations is from a reduction in vigor and fecundity (often evidenced by reduced seed set) as random genetic changes occur and genetic variability is lost as a result of inbreeding which is inevitable in small populations (Ehrlich 1981; Ledig 1986). Because of the small, isolated nature of the populations and the few individuals present in most of them, *G. n.* ssp. *coloradensis* also is more susceptible to random events, such as fires, insect, or disease outbreaks or other random events that can more easily cause the extirpation of a small population.

Although the plant evolved with and even depended upon the disturbance associated with these events, natural events, such as floods and fire, may now pose a threat to *G. n.* ssp. *coloradensis.* Individual plants may not survive such events, and because of low numbers and the now highly restricted range of the species, such events do pose a threat. A flood in 1983 along Crow Creek destroyed several populations and experimental seed plots established in

1981 (U.S. Fish and Wildlife Service, *in litt.* 1984.)

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to *G. n.* ssp. *coloradensis* in determining to issue this proposed rule. Based on this evaluation, the preferred action is to list *G. n.* ssp. *coloradensis* as threatened. While not in immediate danger of extinction, *G. n.* ssp. *coloradensis* is likely to become an endangered species in the foreseeable future if the present threats and declines continue. Federal listing under authority of the Act is the only mechanism the Service can presently identify that ensures protection to *G. n.* ssp. *coloradensis* throughout its limited range. Although destruction or modification of its habitat is a significant threat to *G. n.* ssp. *coloradensis*, the Service has found critical habitat is not prudent (see CRITICAL HABITAT section).

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. The Service finds that designation of critical habitat is not prudent for *G. n.* ssp. *coloradensis.*

Designation of critical habitat would not benefit *G. n.* ssp. *coloradensis* because all but two of the known populations occur on non-Federal lands where Federal involvement in land-use activities does not generally occur. Federal activities would be subject to review under section 7(a)(2) of the Act, whether or not critical habitat was designated. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. Prohibitions of adverse modification to critical habitat would only be realized if a Federal nexus existed, situations anticipated to be rare in the range of *G. n.* ssp. *coloradensis.* Any Federal action which would destroy or adversely modify the habitat of the few remaining populations of the species would also likely jeopardize its continued existence. Therefore, habitat protection from Federal actions can be accomplished through the section 7 jeopardy standard.

Additionally, the publication of critical habitat descriptions and maps required in a proposal for critical habitat could increase the degree of threat from possible take or vandalism and, therefore, contribute to the species' decline. Populations exist in small areas and are vulnerable to stochastic extinction. The listing of this plant as threatened publicizes the rarity of the taxa and can make it attractive to researchers, curiosity seekers, or collectors of rare plants. The Service determines that any potential benefits beyond those afforded by listing, when weighted against the negative impacts of disclosing site-specific population locations, does not yield an overall benefit and is, therefore, not prudent. The overall habitat protection and conservation of this species would be best implemented by the recovery process and section 7 provisions of the Act (see AVAILABLE CONSERVATION MEASURES section).

Available Conservation Measures

The Nebraska State Arboretum is currently maintaining a seed bank of *G. n.* ssp. *coloradensis* collected from sites along Lodgepole Creek in Nebraska (J. Locklear, Nebraska State Arboretum, pers. comm.). Additional seed has been collected by the Natural Resources Conservation Service for deposit at the Bridger Plant Materials Center in Montana.

Habitat along Crow and Diamond Creeks on F.E. Warren Air Force Base has been designated as the Colorado Butterfly Plant Research Natural Area dedicated to the protection of the largest known population of *G. n.* ssp. *coloradensis,* and a management plan has been developed (Marriott and Jones 1988). Two large populations of *G. n.* ssp. *coloradensis* occur within the Colorado Butterfly Plant Research Natural Area. Under various memoranda of understanding and cooperative agreements with the Service and The Nature Conservancy, the Air Force has been conducting conservation activities to this species since 1982. However, the most recent Memorandum of Understanding with the Base expired in March 1997. Additionally, all agreements with the Base regarding the plant can be unilaterally terminated by the Air Force at any time for reasons of national defense. The Base is currently developing a weed-control program to improve and maintain *G. n.* ssp. *coloradensis* habitat in cooperation with scientists from The Nature Conservancy and the University of Wyoming.

In 1983 a population of *G. n.* ssp. *coloradensis* was introduced on the Chambers Preserve near Boulder, Colorado. Although several private landowners with natural populations of the plant have expressed interest in pursuing conservation projects, none are currently in place.

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued

existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all threatened plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Section 4(d) of the Act allows for the provision of such protection to threatened species through regulation. This protection may apply to this species in the future if regulations are promulgated. Seeds from cultivated specimens of threatened plants are exempt from these prohibitions provided that their containers are marked ''Of Cultivated Origin.'' Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. For threatened plants, permits also are available for botanical or horticultural exhibition, educational purposes, or species purposes consistent with the purposes of the Act. It is anticipated that few trade permits would ever be sought or issued because the species is not in cultivation or common in the wild. Requests for copies of the regulations regarding listed species and inquiries about prohibitions and permits may be addressed to U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225 (telephone 303/236–7400, Facsimile 303/236–0027). Information collections associated with these permits are approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094. For additional information concerning these permits and associated requirements, see 50 CFR 17.22.

The Service adopted a policy on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is proposed for listing those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range. The Service believes that, based upon the best available information, the following actions will not result in a violation of section 9, provided these activities are carried out in accordance with existing regulations and permit requirements:

(1) Activities authorized, funded, or carried out by Federal agencies (e.g., grazing management, agricultural conversions, land use activities that would significantly modify the species' habitat, wetland and riparian habitat modification, flood and erosion control, housing development, recreational trail development, road and dam construction, pesticide/herbicide application, pipelines or utility line crossing suitable habitat and military maneuvers and training) when such activity is conducted in accordance with any reasonable and prudent measures given by the Service according to section 7 of the Act; or when such activity does not alter the hydrology or habitat supporting the plant.

(2) Casual, dispersed human activities on foot or horseback (e.g., waterfowl hunting, bird watching, sightseeing, photography, camping and hiking).

(3) Activities on private lands (without Federal funding or involvement), such as grazing management, agricultural conversions, wetland and riparian habitat modification (not including filling of wetlands), flood and erosion control, housing development, road and dam construction, pesticide/herbicide application, pipelines or utility line crossing suitable habitat.

The Service believes that the actions listed below might potentially result in a violation of section 9; however, possible violations are not limited to these actions alone:

(1) Unauthorized collecting of the species on Federal lands;

(2) Application of herbicides violating label restrictions;

(3) Interstate or foreign commerce and import/export without previously obtaining an appropriate permit. Permits to conduct activities are available for purposes of scientific research and enhancement of propagation or survival of the species.

Questions regarding whether specific activities, such as changes in land use, will constitute a violation of section 9 should be directed to the Wyoming Field Supervisor (see **ADDRESSES** section).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat pursuant to section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size or trend of this species;

(4) Current or planned activities in the subject area and their possible impacts on this species;

(5) Biological or physical elements that best describe *G. n.* ssp. *coloradensis* habitat that could be essential for the conservation of the species;

(6) Information regarding genetic differences and similarities within and between populations of *G. n.* ssp. *coloradensis*;

(7) Possible alternative noxious weed control, grazing, farming, and water management practices that will reduce or eliminate impacts to *G. n.* ssp. *coloradensis*; and,

(8) Other management strategies that will conserve the species throughout its range.

Final promulgation of the regulation(s) on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and be addressed to the Wyoming Field Supervisor, see **ADDRESSES** section.

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be

prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

This rule does not contain collections of information that require approval by the OMB under 44 U.S.C. 3501 *et seq.*

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Wyoming Field Office (see **ADDRESSES** section).

Author: The primary author of this document is Mary Jennings of the Wyoming Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	
Gaura neomexicana ssp. *coloradensis.*	Colorado butterfly plant.	USA (CO,NE,WY) ...	Onagraceae	T	.....	NA	NA
*	*	*	*	*	*	*	

Dated: March 6, 1998.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

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