Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or Tribal governments, on the relationship between the national government and the States or Tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act (CRA)

This action is subject to the CRA (5 U.S.C. 801 *et seq.*), and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 3, 2025.

Edward Messina,

Director, Office of Pesticide Programs.

Therefore, for the reasons stated in the preamble, EPA is amending 40 CFR chapter I as follows:

PART 180—TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD

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

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.726, add paragraph (a) to read as follows:

§ 180.726 Metamitron; tolerances for residues.

(a) *General.* Tolerances are established for residues of the herbicide metamitron, including its metabolites and degradates, in or on the commodities in table 1 to this paragraph (a). Compliance with the tolerance levels specified in table 1 to this paragraph (a) is to be determined by measuring residues of metamitron (4-amino-3-methyl-6-phenyl-1,2,4-triazin-5(4H)-one) in or on the following commodities:

TABLE 1 TO PARAGRAPH (a)

Commodity	Parts per million
Apple	0.01
Pear	0.01

* * * * *

[FR Doc. 2025–03872 Filed 3–10–25; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–HQ–ES–2022–0134; FXES1111090FEDR–256–FF09E21000]

RIN 1018–BG93

Endangered and Threatened Wildlife and Plants; Similarity of Appearance Explanation for the Northern Distinct Population Segment of the Southern Subspecies of Scarlet Macaw

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notification of explanation; opening of comment period.

SUMMARY: In response to an order by the United States District Court for the District of Columbia, we, the U.S. Fish and Wildlife Service, are opening a public comment period related to a specific issue regarding our listing determination under the Endangered Species Act (Act) for the northern distinct population segment (DPS) of the southern subspecies of the scarlet macaw (*Ara macao macao*). We seek comments on the explanation presented in this document regarding why we did not conduct an analysis under section 4(e) of the Act pertaining to the DPS.

DATES: We will accept comments received or postmarked on or before April 10, 2025. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. eastern time on the closing date.

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *https://www.regulations.gov.* In the Search box, enter FWS–HQ–ES–2022–0134, which is the docket number for documents related to the explanation and listing determination. Then click on the Search button. You may submit a comment by clicking on ''Comment.''

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–HQ–ES–2022–0134, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *https://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Public Comments, below, for more information).

FOR FURTHER INFORMATION CONTACT: Rachel London, Manager, Branch of Delisting and Foreign Species, Ecological Services Program, U.S. Fish and Wildlife Service, MS: ES, 5275 Leesburg Pike, Falls Church, VA 22041–3803 (telephone 703–358–2171). Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Background

On February 26, 2019, we, the U.S. Fish and Wildlife Service (Service), published in the **Federal Register** a final rule under the Endangered Species Act

of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*) (84 FR 6278; hereafter referred to as ''the 2019 rule''). The 2019 rule was the outcome of a rulemaking proceeding that began with a proposed rule (77 FR 40222, July 6, 2012) and a revised proposed rule (81 FR 20302, April 7, 2016).

The 2019 rule revised the List of Endangered and Threatened Wildlife in title 50 of the Code of Federal Regulations (at 50 CFR 17.11(h)) to:

- Add the northern subspecies of scarlet macaw (*A. m. cyanoptera*) as an endangered species;
- Add the northern distinct population segment (DPS) of the southern subspecies (*A. m. macao*) as a threatened species; and
- Add the southern DPS of the southern subspecies (*A. m. macao*) and subspecies crosses (*A. m. cyanoptera* and *A. m. macao*) as threatened species due to similarity of appearance to the northern subspecies (*A. m. cyanoptera*) and to the northern DPS of the southern subspecies (*A. m. macao*).

The 2019 rule also added protective regulations to 50 CFR 17.41 pursuant to section 4(d) of the Act for the northern and southern DPSs of the southern subspecies and for subspecies crosses (hereafter, ''the 4(d) rule''). For a more thorough discussion of the taxonomy, life history, distribution, and the determination of listing status for scarlet macaws under the Act, please refer to the 2019 rule.

In the 2019 rule, we determined that the northern DPS of the southern subspecies of scarlet macaw met the definition of a threatened species because it was likely to become in danger of extinction within the foreseeable future throughout all of its range. In response to litigation, on April 3, 2023 (88 FR 19549), we published additional analyses and a final threatened species determination for the northern DPS of the southern subspecies of scarlet macaw.

As part of a lawsuit in the United States District Court for the District of Columbia that challenged the macaw listing (*Friends of Animals* v. *Williams* (No. 1:21–cv–02081–RC) (*Friends of Animals*)), on July 10, 2024, the court found that the 2019 rule was flawed in part because it did not include an explanation as to why we decided not to consider listing the northern DPS of the southern subspecies as an endangered species based on similarity of appearance to the northern subspecies. The court remanded the 2019 rule back to us for further explanation on this issue. However, the court did not vacate the 2019 rule, instead finding that ''the deficiency identified in the 2019 Final Rule—the Service's lack of explanation for why it decided not to consider listing the Northern DPS as endangered based on similarity of appearance—is relatively minor and also has 'a real possibility of being cured by further explanation on remand.' . . . On remand, the Service may, for instance, be able to explain why it exercised its significant discretion not to consider a similarity-of-appearance listing for the Northern DPS, or it may decide to reconsider uplisting the Northern DPS based on such a rationale.'' Subsequently, on October 8, 2024, the court ordered the Service to submit to the Office of the Federal Register no later than March 7, 2025, a ''notice opening a 30-day public comment period on either (1) a draft ESA Section 4(e) analysis for the Northern DPS, or (2) an explanation regarding why the Service exercised its significant discretion not to consider a similarity-of-appearance listing for the Northern DPS.''

Accordingly, this document provides the court-ordered explanation as to why we did not consider a similarity-of-appearance listing as endangered under section 4(e) for the northern DPS of the southern subspecies in addition to the determination of threatened status under section 4(a). We are providing this explanation in compliance with the district court's order. The government filed a notice of appeal of the district court's order on December 5, 2024, but have not yet received authorization from the Office of the Solicitor General to pursue the appeal. If the Solicitor General does not authorize appeal, we will voluntarily dismiss the appeal. By providing this explanation, we are not indicating our agreement with the district court's holding. As addressed further below, it is our position that section 4(e) of the Act does not provide us with authority to treat a threatened species listed pursuant to section 4(a) of the Act as an endangered species based on similarity of appearance to an endangered species. Therefore, we do not intend in future rulemakings to provide explanations as to why we did not consider treating other species as endangered under section 4(e) of the Act if those species separately warrant listing as threatened species under section 4(a) of the Act.

For a description of previous Federal actions concerning the scarlet macaw, please refer to:

- the 2022 notification of additional analysis (87 FR 66093, November 2, 2022),
- the 2023 significant portion of the range (SPR) analysis (88 FR 19549, April 3, 2023), and
- the 2024 opening of a comment period on the 2023 SPR analysis (89 FR 104950, December 26, 2024).

Explanation

With this document, we hereby open a 30-day public comment period on our explanation as to why we did not consider a similarity-of-appearance listing for the northern DPS of the southern subspecies of scarlet macaw under section 4(e) of the Act.

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations in title 50 of the Code of Federal Regulations set forth the procedures for determining whether a species is an endangered species or a threatened species, issuing protective regulations for threatened species, and designating critical habitat for endangered and threatened species.

The Act defines an ''endangered species'' as a species that is in danger of extinction throughout all or a significant portion of its range and a ''threatened species'' as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range (16 U.S.C. 1532(6), (20)). The Act requires that we determine whether any species is an endangered species or a threatened species because of any of the following factors in section 4(a):

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

Section 2 of the Act states that the purposes of the Act include providing a means to conserve the ecosystems upon which endangered and threatened species depend, developing a program for the conservation of listed species, and achieving the purposes of certain treaties and conventions (16 U.S.C. 1531(b)). The ultimate goal of conservation efforts is the recovery of listed species, so that they no longer need the protective measures of the Act.

The Act provides multiple tools to conserve species that warrant protection under section 4(a) and have been added to the List of Endangered and Threatened Wildlife (50 CFR 17.11) or List of Endangered and Threatened Plants (50 CFR 17.12). These include (among other protections) designation of critical habitat, recovery planning under section 4(f), protective regulations for threatened species under section 4(d), and Federal agency requirements to ensure their actions are not likely to jeopardize the continued existence of listed species or destroy or adversely modify their critical habitat under section 7(a)(2).

One of these tools, section 4(e), provides us with the discretion to treat species as endangered species or threatened species when they are not listed under section 4(a). This authority to treat species as endangered or threatened when they are similar in appearance to (*i.e.,* resemble) a species that is listed under section 4(a) is limited to situations when treating the species as endangered or threatened under section 4(e) could help protect the listed species that it resembles. In other words, under section 4(e), we may treat an unlisted species as an endangered or threatened species if doing so will facilitate enforcement of the Act for the benefit of, and reduce threats to, the species listed under section 4(a). The Act's tools and protections for endangered and threatened species are directed at the species that meet the definitions of endangered species or threatened species under section 4(a), not the species that are treated as endangered or threatened under section 4(e) solely because of a similarity in appearance.

Section 4(e) of the Act provides that the Secretary may, by regulation of commerce or taking, and to the extent he deems advisable, treat any species as an endangered species or threatened species even though it is not listed pursuant to section 4 of the Act if the Secretary finds three criteria are met that: (A) such species so closely resembles in appearance, at the point in question, a species which has been listed pursuant to the Act that enforcement personnel would have substantial difficulty in attempting to differentiate between the listed and unlisted species; (B) the effect of this substantial difficulty is an additional threat to an endangered or threatened species; and (C) such treatment of an unlisted species will substantially facilitate the enforcement and further the policy of the Act (16 U.S.C. 1533(e)). The Act provides the Service discretion in determining both when and how to apply section 4(e). However, as discussed below, there are several ways in which the statutory language demonstrates that Congress did not intend for the 4(e) authority to apply to species that warrant listing under section 4(a). Moreover, the legislative history further underscores this limitation on 4(e) authority.

First, the plain language of the Act provides for no circumstances in which a species that meets the definition of a threatened species under section 4(a) would also meet the criteria at section 4(e)(A)–(C) for being ''treated'' as an endangered species. Treating a species as endangered under section 4(e), when that species separately warrants protection in its own right as a threatened species under section 4(a), would circumvent the protections intended for species that qualify for listing under section 4(a) and would never satisfy the requirements under 4(e)(C) to further the policy of the Act (*i.e.,* section 2(b)–(c) of the Act). Sections 4(a)–(c) establish the primary mechanism for determining whether species meet the definition of an endangered species or a threatened species. For species that meet the definition of an endangered species or a threatened species based on the factors and standards set out in sections 4(a)–(b), section 4(c)(l) provides the mandatory requirement that the Secretary list those species according to the definition they meet. Nowhere does section 4(a)–(c) include a requirement to consider a species' similarity of appearance to an already listed species when making a listing determination, nor does 4(e) either address, alter, or amend any of the provisions in sections 4(a)–(c) or characterize the similarity-of-appearance authority it provides as mandatory.

Moreover, for species that meet the definition of a threatened species under section 4(a), treating the species instead as endangered under section 4(e) would not provide any greater protections than the species would otherwise receive as a threatened species listed under section 4(a). In most cases, doing so would actually provide species with fewer protections than listing them as threatened species under section 4(a). This is because species *treated* as endangered or threatened under section 4(e) do not receive the protections of the Act provided to species *listed* under section 4(a), such as the designation of critical habitat, consultation requirements for Federal agencies under section 7, and the recovery planning provisions under section 4(f).

Section 4(e) specifies that the authority to ''treat'' any similarity-of-appearance species as an endangered or threatened species is to be exercised ''by regulation of commerce or taking, and to the extent [the Secretary] deems advisable.'' Therefore, all applicable prohibitions and exceptions for species treated under section 4(e) of the Act as endangered or threatened based on their similarity of appearance to a species listed under section 4(a) are set forth by regulation, such as in a species-specific rule, and are determined with the goal of furthering the conservation of the species listed under section 4(a) that the 4(e) species resembles. The Act does not differentiate how the Service should regulate commerce or taking of species treated as endangered based on similarity of appearance as compared to those treated as threatened based on similarity of appearance. In either situation, the Service issues regulations that it deems are advisable relating to commerce or taking of the species. Moreover, there is no requirement that those regulations for a species being treated as endangered under section 4(e) provide greater protections than the regulations for treating a species as threatened under section 4(e). For all these reasons, treating a species as endangered under section 4(e), when that species separately warrants protection as a threatened species under section 4(a), will not facilitate the enforcement or further the policy of the Act.

Second, the court's interpretation in *Friends of Animals* that the section 4(e) ''similarity of appearance'' provision requires the Service to consider treating a species as endangered when it is listed as threatened under section 4(a) is in direct conflict with the plain language of section 4 of the Act. Section 4(e) explicitly limits its applicability to unlisted species, authorizing the Secretary to treat any species as an endangered species or threatened species ''*even though it is not listed* pursuant to section 4 of this Act.'' Similarly, the third criterion for treating a species as endangered or threatened pursuant to section 4(e) requires that ''such treatment of *an unlisted species* will substantially facilitate the enforcement and further the policy of this Act'' (sections 4(e) and 4(e)(C) (emphases added)). Thus, our authority to treat species as endangered species or threatened species due to similarity of appearance is limited to species that are otherwise ''unlisted'' or ''not listed'' and does not extend to species that are listed under section 4(a).

If Congress had intended for section 4(e) to apply to any species that warrant listing as endangered species or threatened species under section 4(a),

Congress would have no need to include the terms ''unlisted'' and ''not listed'' in section 4(e). Congress also used the latter of those terms—''not listed''—in section 9 of the Act. In both section 4(e) and section 9, those terms are used as a necessary precondition for any species to qualify for the statutory provision at issue. Under section 4(e), only a species that is ''not listed'' may be considered for treatment as an endangered or threatened species based on similarity of appearance to a listed species. Under section 9, the term ''not listed'' is a precondition for the limited exceptions to import or export prohibitions (*i.e.,* ''It is unlawful [to import or export] . . . fish or wildlife (other than shellfish and fishery products which (i) are not listed pursuant to section 4 of this Act as endangered species or threatened species, and . . .)'' (section 9(d)(1)(A), with similar language in sections 9(e) and (f)).

This conclusion is also supported by the Act's legislative history. Multiple congressional reports—from both houses of Congress—made this clear. For example, when the Act was enacted in 1973, the Senate Report described how the statute deals with the problem presented by two species that are so similar in appearance that people without specialized training cannot distinguish between them: ''If one species *is listed* under section 4, but *the other is not,* the Secretary may treat *the unlisted species* as an endangered or threatened species if such treatment will substantially facilitate the enforcement and further the policy of this Act'' (S. Rep. No. 93–307, at 9 (1973) (emphasis added)); *see also* H. Rep. No. 93–412, at 12 (1973), and H.R. Rep. 100–928, at 20 (1988)). In light of the clear statutory language and legislative history, while the Service has discretion in when to treat an ''unlisted'' or ''not listed'' species as an endangered species or threatened species under section 4(e), this discretion does not extend to species that warrant listing under section 4(a), like the northern DPS (16 U.S.C. 1533(a); 1532 (6), (20)).

In accordance with the statutory language and legislative history, our regulations, guidance, and longstanding practice all provide for treatment of species as endangered or threatened under section 4(e) only when the species is not listed under section 4(a). Our regulations provide that ''whenever a species *which is not Endangered or Threatened* closely resembles an Endangered or Threatened species, such species may be treated as either Endangered or Threatened'' (50 CFR 17.50, emphasis added). These regulations have remained substantively unchanged since their promulgation in 1975 (although they were amended for other reasons at various times). Moreover, since the inception of section 4(e), we have only ever considered invoking its authority for species that do not warrant listing under section 4(a), and we have never evaluated a section 4(a)-listed species under section 4(e). For example, in invoking section 4(e) to treat the American alligator as listed in 1975, we first delisted three populations of alligators that had previously been listed as endangered species under section 4(a) and then decided to treat those unlisted populations as listed under section 4(e) (40 FR 44412, Sept. 26, 1975).

In light of the above points, the Service does not evaluate whether to treat a species as endangered under section 4(e) of the Act if that species separately meets the definition of a threatened species under section 4(a). Therefore, because we found that the northern DPS of the southern subspecies of scarlet macaw meets the definition of a threatened species under section 4(a), we did not evaluate whether it should be treated as an endangered species under section 4(e).

However, even if the Act did give us the authority to evaluate whether the northern DPS of the southern subspecies of macaw should be treated as an endangered species under section 4(e), we would not find that the northern DPS met the criteria for such treatment identified in section 4(e)(A)–(C). As explained above, and further discussed below, treating the northern DPS as endangered under section 4(e) of the Act rather than actually listing it as a threatened species under section 4(a) would not provide any additional protections for either the northern DPS or the northern subspecies, meaning such treatment would not facilitate the enforcement or further the policy of the Act.

This conclusion is further supported by the court's ruling in *Friends of Animals* upholding our treatment of the southern DPS as a threatened (rather than endangered) species pursuant to section 4(e) of the Act. We found it was appropriate to treat the southern DPS of the southern subspecies as threatened, not endangered, under section 4(e) ''because the 4(d) rule . . . provide[d] adequate protections for'' the section 4(a)-listed scarlet macaws that the southern DPS resembled, and the treatment of the southern DPS as threatened would substantially facilitate law enforcement actions to protect and conserve those 4(a)-listed macaws, including the endangered northern subspecies (84 FR 6278, February 26, 2019). The court in *Friends of Animals* upheld that determination, finding, ''[h]aving reviewed the whole record—and cognizant of the significant discretion that Congress vested in the Service to make similarity-of-appearance listing decisions, *see* 16 U.S.C. 1533(e)—the Court finds that the Service satisfactorily discharged its duty to articulate a 'rational connection between the facts found and the choice made' to list the Southern DPS as threatened'' and not endangered as plaintiff argued.

The same reasoning would apply when evaluating whether to treat the northern DPS as endangered under section 4(e), rather than listing it as a threatened species under section 4(a). Specifically, the 4(d) rule for the northern DPS also provides adequate protections for the northern subspecies. Additionally, treating the southern DPS as threatened under section 4(e) and listing the northern DPS as a threatened species under section 4(a) will facilitate law enforcement actions to protect and conserve both the northern DPS and the northern subspecies. As such, the Service would have no basis for extending additional protections to the northern DPS if it were treated as endangered based on similarity of appearance to the northern subspecies. Therefore, we would not treat the northern DPS as endangered under section 4(e) rather than list it as a threatened species under section 4(a) because so doing would not facilitate enforcement or further the policy of the Act for the conservation of either the northern DPS of the southern subspecies of scarlet macaw (*A. m. macao*) or the northern subspecies of scarlet macaw (*A. m. cyanoptera*).

Public Comments

We will accept written comments and information during this comment period on our analysis and explanation. Consistent with the Court's order in *Friends of Animals,* we will submit a ''final ESA Section 4(e) analysis or explanation'' after considering all comments and information that we receive. Comments should be as specific as possible and include any supporting information and appropriate citations.

You may submit your comments and materials by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**. If you submit information via *https://www.regulations.gov,* your entire submission—including your personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes

personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *https://www.regulations.gov.* Comments and materials we receive, as well as prior documentation associated with the scarlet macaw rulemaking action, are available for public inspection on *https://www.regulations.gov* at Docket No. FWS–HQ–ES–2022–0134.

Authority

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), is the authority for this action.

Paul Souza,

Regional Director, Region 8, Exercising the Delegated Authority of the Director, U.S. Fish and Wildlife Service.

[FR Doc. 2025–03818 Filed 3–10–25; 8:45 am]

BILLING CODE 4333–15–P