

## GENERAL SERVICES ADMINISTRATION

### 41 CFR Parts 300–3, 302–6 and 302–17

[FTR Case 2022–02; Docket No. GSA–FTR–2022–0012, Sequence No. 1]

RIN 3090–AK63

### Federal Travel Regulation (FTR); Relocation Allowance—Temporary Quarters Subsistence Expenses (TQSE)

**AGENCY:** Office of Government-wide Policy (OGP), General Services Administration (GSA).

**ACTION:** Proposed rule.

**SUMMARY:** The United States (U.S.) General Services Administration (GSA) is proposing to amend the Federal Travel Regulation (FTR) by implementing a third methodology for reimbursing temporary quarters subsistence expenses (TQSE) allowance and redefining the current methods of reimbursing TQSE to include, among others, lowering the percentage multipliers for calculating TQSE maximum daily amounts. The proposed rule would clarify that TQSE percentage multipliers cannot be adjusted for househunting days. The proposed rule also lists an exception to the “reasonable proximity” requirement for temporary quarters (TQ) located in a Presidentially-Declared Disaster area and allows agencies to authorize TQSE at the applicable locality per diem allowance or authorize actual expenses on an individual basis for TQ located in a Presidentially-Declared Disaster area. Instead of authorizing actual expenses on an individual basis, agencies can issue a blanket actual expense authorization for employees authorized to occupy TQ in Presidentially-Declared Disaster areas. The proposed rule would also update and clarify some TQSE sections and rearrange them into a more sequential order.

**DATES:** Interested parties should submit written comments to the Regulatory Secretariat Division at the address shown below on or before July 24, 2023 to be considered in the formation of the final rule.

**ADDRESSES:** Submit comments in response to FTR Case 2022–02 to: *Regulations.gov*; <https://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching for “FTR Case 2022–02”. Select the link “Comment Now” that corresponds with “FTR Case 2022–02.” Follow the instructions provided on the screen. Please include your name, company name (if any), and “FTR Case

2022–02” on your attached document. If your comment cannot be submitted using <https://www.regulations.gov>, call or email the points of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

**Instructions:** Please submit comments only and cite FTR Case 2022–02, in all correspondence related to this case. Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check [www.regulations.gov](https://www.regulations.gov), approximately two to three days after submission to verify posting.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Mr. Rodney (Rick) Miller, Program Analyst, Office of Government-wide Policy, at 202–501–3822 or [travelpolicy@gsa.gov](mailto:travelpolicy@gsa.gov). For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or [GSARegSec@gsa.gov](mailto:GSARegSec@gsa.gov). Please cite FTR Case 2022–02.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Pursuant to 5 United States Code (U.S.C.) 5738, the Administrator of General Services is authorized to prescribe regulations necessary to implement laws regarding Federal employees when assigned a temporary change of station (TCS) or when otherwise transferred in the interest of the Government. The overall implementing authority is the FTR, codified in title 41 of the Code of Federal Regulations, chapters 300 through 304.

GSA’s Office of Government-wide Policy (OGP) continually reviews and adjusts policies and regulations under its purview to address current Government relocation needs and incorporate best practices, where appropriate, as a part of its ongoing mission to provide policies for travel by Federal civilian employees and others authorized to travel at Government expense.

Each year, the Federal Government spends more than \$1 billion on relocation allowances to reimburse an average of 31,500 employees for their related expenses. Federal agencies can offer relocation allowances as an incentive to assist with defraying some of the costs for relocating individuals. The FTR provides regulatory procedures for certain mandatory and discretionary relocation allowances depending on the individual’s type of movement.

Pursuant to 5 U.S.C. 5724a(c) and 5737(a)(5), an employee transferred in

the interest of the Government may be authorized a TQSE allowance to reimburse the employee and the employee’s immediate family members for subsistence expenses incurred when it is necessary to occupy TQ. TQSE may be authorized for the following transfers: between official duty stations within the U.S.; from a foreign area to an official duty station in the U.S.; or assignment to a temporary official station and/or permanently assigned to a temporary official station within the U.S.

Agencies may offer two existing methods of TQSE: TQSE-actual expense (TQSE-AE) or TQSE-lump sum (TQSE-LS). Since fiscal year 2018, Federal agencies have approved about 12,000 TQSE claims annually for employees who relocated, with TQSE-AE as the most utilized reimbursement method.

Under the TQSE-AE method, the employee is reimbursed the cost of their actual subsistence expenses not to exceed the authorized maximum allowable amount. The TQSE-AE method uses the standard continental United States (CONUS) per diem rate or the outside the continental United States (OCONUS) non-foreign area per diem rate as the applicable per diem rate based on the TQ location. The employee and each of the employee’s immediate family members receives a percentage of that rate. The rate is applied to the first 30-day increment of occupying TQ and a reduced rate is applied after 30 days. Occupancy of TQ may extend up to the statutory maximum of 120 consecutive days. The employee documents their incurred daily allowable expenses, which may include: TQ lodging, including taxes; meals and/or groceries; fees and tips incident to meals and TQ lodging; and laundry/dry cleaning of clothes. The employee provides TQ lodging receipt(s) and a receipt for every expense over \$75, for each 30-day period of TQ occupancy.

In 2005, the Governmentwide Relocation Advisory Board (GRAB), which included representatives from Government agencies, private-sector corporate relocation departments, relocation industry associations, and/or relocation industry service providers, mentioned in its “Findings and Recommendations” that the TQSE-AE method is administratively burdensome and time-consuming for employees, travel examiners, and certifying official.

Since 1966, Title 5 of the U.S. Code has provided authority for agencies to reimburse TQSE in connection with an employee transferred in the interest of the Government. At that time, only one per diem rate was used within

CONUS—the standard CONUS rate. Since that time, however, GSA began establishing CONUS non-standard area (NSA) per diem rates for areas where the standard CONUS rate was insufficient. Currently, Federal agencies have employees assigned to offices and military bases in CONUS NSAs where the standard CONUS rate is insufficient for obtaining TQ lodging and meals under the TQSE–AE method. This is particularly true for single employees. Accordingly, for TQSE–AE and all TQSE methods, the proposed rule would allow for CONUS NSA per diem rates to be used as an applicable per diem rate to calculate the maximum daily amount of TQSE, depending upon where TQ will be occupied.

This proposed rule would also clarify that there is no requirement to separate maximum amounts for TQ lodging and M&IE in calculating TQSE–AE reimbursement. Accordingly, the separate allowances for TQ lodging and M&IE may be combined to produce a single maximum daily amount (which would allow some of the M&IE rate to offset the TQ lodging cost). Agencies can still ensure that an employee is not overcompensated by using the single maximum daily amount while also accounting for the rate change after 30 days in TQ.

Under the TQSE–LS method, agencies may offer a lump sum amount based on the standard CONUS, CONUS NSA, or OCONUS non-foreign area per diem rates, as appropriate, depending on the locality of the old and/or new official stations and wherever TQ will be occupied. Under this reimbursement method, a percentage of the maximum applicable per diem rate is paid to the employee and the employee's immediate family members for a maximum of 30 days of TQSE. Under TQSE–LS, there is no requirement to document and itemize expenses; however, the employee must certify that they occupied TQ.

To improve employees' relocation experience and assist agencies in processing relocation expenses reimbursement, GSA is proposing to amend the FTR to implement a third method of TQSE titled "temporary quarters subsistence expenses-lodgings-plus" (TQSE–LP). This third method would be the preferred TQSE reimbursement method for agencies to offer to employees; however, agencies may continue to offer TQSE–AE and/or TQSE–LS as an alternative. In accordance with 5 U.S.C. 5724a(h), TQSE–LP must follow the limitations prescribed for payments of subsistence expenses under 5 U.S.C. 5702. TQSE–LP is in line with 5 U.S.C. 5702 which

entitles an employee who performs official business away from their official station, a per diem allowance, reimbursement for actual and necessary expenses, or a combination of both. The FTR implements the "combination of both" statutory language by utilizing the temporary duty (TDY) "lodgings-plus per diem" methodology, which entitles an employee to reimbursement of actual lodging expenses up to a maximum amount by locality area, as supported by receipts, and a meals and incidental expenses (M&IE) allowance, which may be reimbursed without itemization or receipts. Accordingly, the proposed TQSE–LP method would follow similar principles as the TDY travel "lodgings-plus" method of per diem for reimbursement of TQSE under Chapter 302.

A difference between TDY lodgings-plus and TQSE–LP is that the TDY per diem allowance excludes lodging taxes and laundry/dry cleaning expenses from the per diem rate and allows the traveler to claim them as a separate TDY miscellaneous expense under part 301–12. However, part 302–6, does not contain or incorporate by reference, the provisions of Chapter 301 permitting recovery of these types of miscellaneous expenses nor are lodging taxes and laundry/dry cleaning expenses included in part 302–16. The proposed rule clarifies that laundry/dry cleaning expenses are included in the TQSE daily allowable M&IE expenses and TQ lodging taxes are separately reimbursable TQSE miscellaneous expenses.

The proposed TQSE–LP method would follow TQSE–LS and TQSE–AE by calculating reimbursement using the applicable per diem rate for the locality of the old and/or new official stations wherever TQ lodging will be occupied in the U.S. As with TQSE–AE, the proposed TQSE–LP method would permit occupancy of TQ beyond the initial authorization of 30 days (up to a maximum of 120 consecutive days), and reduce the maximum daily amount of TQSE after the initial 30-day period of TQ occupancy. Unlike TQSE–AE, however, the TQSE–LP method would require that TQ lodging and M&IE remain as separate maximum amounts for purposes of calculating the maximum daily amount of TQSE for the employee and the employee's immediate family members.

When compared with TQSE–AE, the proposed TQSE–LP method will result in a more efficient process for the traveler, travel examiner, and certifying official and would significantly reduce the administrative burden of maintaining, submitting, and reviewing

all subsistence expenses receipts and claims, other than the required lodging receipt. The reduced administrative burden should increase employee satisfaction with the relocation process, which is important for current employee recruitment and retention purposes.

The proposed rule would also reduce the percentage multipliers used to calculate the TQSE–AE and TQSE–LP maximum daily amount for each 30 days of TQSE. Because GSA is also proposing to permit use of CONUS NSA rates instead of requiring use of the CONUS standard rate when applicable, GSA has determined that lowering the percentage multipliers would still provide reasonable and equitable reimbursement to employees and their immediate family members for TQSE–AE and TQSE–LP.

Pursuant to 5 U.S.C. 5724a(b), an agency may authorize an employee and/or spouse who is transferring between official stations located within the United States to take one househunting trip (HHT) to seek permanent residence quarters at a new official station. The purpose of the HHT is to lower the overall TQ cost. Accordingly, agencies may reduce the number of days of TQSE if HHT is authorized. The agency also has the discretion to authorize full HHT (5 U.S.C. 5724a(b)) and subsequent TQSE (5 U.S.C. 5724a(c)), as the two are separate entitlements.

This proposed rule would clarify the effect on TQSE when an employee performs an HHT prior to relocating to the new official station. Specifically, agencies may reduce the number of overall TQSE days by the HHT days, but are not permitted to use HHT days to reduce the percentage multiplier for calculating TQSE.

Further, the proposed rule would eliminate the need for GSA to issue an FTR bulletin waiving FTR 302–6.9, which currently requires that TQ be in reasonable proximity to the old and/or new official stations, and FTR 302–6.102, which currently limits the applicable per diem allowance under the actual TQSE reimbursement method to the standard CONUS rate for TQ located in CONUS. Instead, the proposed rule lists TQ located in a Presidentially-Declared Disaster area as an exception to the "reasonable proximity" requirement, removes the limitation at 302–6.102, and allows agencies to authorize TQSE at the applicable locality per diem allowance or to authorize actual expenses (not to exceed the 300% ceiling) on an individual basis for TQ located in a Presidentially-Declared Disaster area. Instead of issuing individual actual expense authorizations, agencies may

issue a blanket actual expense authorization for employees authorized to occupy TQ in an area subject to a Presidentially-Declared Disaster. These changes should result in quicker notification to agencies and employees of their TQSE during a Presidentially-Declared Disaster rather than waiting for GSA to issue an FTR bulletin.

Finally, the proposed rule will also modify some FTR sections regarding TQSE and rearrange them into a more sequential order.

## II. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

## III. Impact Analysis

GSA performed an economic analysis on the proposed rule. GSA used the Business Travel and Relocation Dashboard to calculate an average of 31,500 domestic and international relocations per year since 2018 across the Federal Government with Federal agencies authorizing approximately 12,000 employees to receive TQSE, which is a discretionary relocation entitlement the agency may authorize to include the types of methods and the number of days authorized. GSA notes that Federal agencies are only required to track specific relocation data entitlements and not the different specific types within the entitlement.

GSA does not know the historical distribution of relocation as the Business Travel and Relocation Dashboard only accounts for the overall TQSE claims and the overall amount and does not differentiate between the types of TQSE (actual expense or lump sum), if TQSE is for an employee only or an employee with family members, locations of where TQSE occurred, or the number of total days for each claim within the United States (U.S.). Given that the scope of this proposed rule is limited to relocations within the continental U.S. (CONUS) and expenses are based on the GSA per diem rates, GSA used the FY23 per diem rates to

test how the proposed changes for TQSE-LP might compare to existing policy in terms of cost for those relocating to high cost areas.

The standard CONUS per diem rate is \$157 for FY23 (\$98 Lodging + \$59 M&IE). In FY23, there are 316 non-standard areas (NSAs) where GSA establishes per diem rates that are higher than the standard CONUS rate. Approximately half of the NSAs have seasonal rates. Under the proposed rule, for the employee's portion, the lodging and M&IE rates would use the same percentage for the initial 30-day period (currently 100%) or the second 30-day increment (currently 75%). However, the proposed rule would reduce the percentage for the last 60 days from the current rate of 75% to 55%. The family members' portion (currently 75% age 12 and over and 50% under 12) would be reduced for the first 30 days (50% and 40% respectively) and further reduced for each 30 day increment. There are 209 NSAs where the average (across seasons) per diem rate reduced to 75% would be less than the standard CONUS rate of \$157. The average across all 316 NSAs of the average per diem rate reduced to 75% is \$156.

The proposed rule to implement TQSE-LP method is similar to the Department of State foreign transfer allowance (FTA, "Pre-Departure Subsistence Allowance and Home Service Allowance—Partial Flat Rate" reimbursement methods used for Foreign Service Officers relocating to and from foreign assignments and occupy temporary quarters in the U.S., while the proposed reduce percentage is similar to the temporary quarters subsistence allowance (TQSA) for Foreign Service Officers and other Federal employees who relocate and occupy temporary quarters in a foreign country.

Increased costs of using TQSE-LP would be offset by anticipated cost savings from streamlining the administrative process for the traveler and agency travel examiners and certifying officials.

Measuring cost avoidance for TQSE-AE does not include the time the travelers must take, and resulting frustration, to retain and record each individual lodging, meal and laundry expense, including for all family members. TQSE-LP would increase employee satisfaction with the relocation process and significantly reduce the agency and employee administrative burden of maintaining, submitting and reviewing all subsistence expenses receipts and claims. Accordingly, TQSE-LP would maintain a budget neutral or possible

cost reduction due to lower anticipated administrative costs.

## IV. Regulatory Flexibility Act

GSA does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it applies only to Federal agencies and employees. Therefore, an Initial Regulatory Flexibility Analysis was not performed.

## V. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FTR do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

### List of Subjects in 41 CFR Parts 300–3, 302–6, and 302–17

Government employees, Relocation, Travel and transportation expenses.

**Krystal J. Brumfield,**

*Associate Administrator, Office of Government-wide Policy.*

For reasons set forth in the preamble, GSA proposes to amend 41 CFR parts 300–3, 302–6, and 302–17 as set forth below:

### PART 300–3—GLOSSARY OF TERMS

■ 1. The authority for part 300–3 is revised to read as follows:

**Authority:** 5 U.S.C. 5707; 40 U.S.C. 121(c); 49 U.S.C. 40118; 5 U.S.C. 5738; 5 U.S.C. 5741–5742; 20 U.S.C. 905(a); 31 U.S.C. 1353; E.O. 11609, as amended, 3 CFR, 1971–1975 Comp., p. 586, Office of Management and Budget Circular No. A–126, revised May 22, 1992.

#### § 300–3.1 [Amended]

■ 2. Amend § 300–3.1 by adding a note at the end of the definition "Per diem allowance" to read as follows:

#### § 300–3.1 What do the following terms mean?

\* \* \* \* \*  
*Per diem allowance*— \* \* \*

**Note 1 to definition of "Per diem allowance":** For the purposes of chapter 302 of this subtitle, laundry/dry cleaning expenses are part of the incidental expenses portion of the per diem allowance for temporary quarters subsistence expenses (TQSE) and temporary quarters (TQ) lodging taxes are separately reimbursable TQSE miscellaneous expenses (see § 302–6.28 and part 302–16 of this subtitle).

\* \* \* \* \*

■ 3. Revise part 302–6 to read as follows:

**PART 302–6—ALLOWANCE FOR TEMPORARY QUARTERS SUBSISTENCE EXPENSES**

**Subpart A—General Rules**

Sec.

- 302–6.1 What are “temporary quarters subsistence expenses (TQSE)”?
- 302–6.2 What is the purpose of the TQSE allowance?
- 302–6.3 What are “temporary quarters”?
- 302–6.4 Am I eligible for a TQSE allowance?
- 302–6.5 Who is not eligible for a TQSE allowance?
- 302–6.6 Am I eligible for a TQSE allowance if I transfer to or from a foreign area?
- 302–6.7 Must my agency authorize payment of a TQSE allowance?
- 302–6.8 Under what circumstances will I receive a TQSE allowance?
- 302–6.9 Who may occupy temporary quarters at Government expense?
- 302–6.10 Where may I/we occupy temporary quarters at Government expense?
- 302–6.11 May my immediate family and I occupy temporary quarters at different locations?
- 302–6.12 How soon may I/we begin occupying temporary quarters at Government expense?
- 302–6.13 What is the latest period for which TQSE reimbursement may begin?
- 302–6.14 When does my authorized period for claiming TQSE reimbursement end?
- 302–6.15 May I and/or my immediate family occupy temporary quarters longer than the period for which I am authorized to claim TQSE reimbursement?
- 302–6.16 May the period for which I am authorized to claim TQSE reimbursement for myself be different from that of my immediate family?
- 302–6.17 What effect do partial days of temporary quarters occupancy have on my authorized period for claiming TQSE reimbursement?
- 302–6.18 How is my TQSE allowance affected if my temporary quarters become my permanent residence quarters?
- 302–6.19 May I receive a TQSE allowance if I am receiving another subsistence expense allowance?
- 302–6.20 May I be reimbursed for transportation expenses incurred while I am occupying temporary quarters?
- § 302–6.21 May I be reimbursed for TQSE while occupying my permanent residence quarters at my old official station?
- § 302–6.22 What methods may my agency use to reimburse me for TQSE?
- § 302–6.23 What is the “applicable per diem rate” under the TQSE reimbursement methods?
- § 302–6.24 How may my TQSE reimbursement be affected if I relocate to, or currently occupy, temporary quarters in a Presidentially-Declared Disaster area?

- § 302–6.25 Must I document my TQSE to receive reimbursement?
- § 302–6.26 May I receive an advance of funds for TQSE?
- § 302–6.27 Must I use a Government contractor-issued travel charge card for TQSE?
- § 302–6.28 Are temporary quarters lodging taxes and laundry/dry cleaning expenses included in the TQSE amount?
- § 302–6.29 How long may I be authorized to claim TQSE reimbursement?
- § 302–6.30 May my agency reduce my authorized number of TQSE days if I am authorized a househunting trip?
- § 302–6.31 What is a “compelling reason” warranting extension of my authorized period for claiming TQSE–LP or TQSE–AE reimbursement?
- § 302–6.32 May I interrupt occupancy of temporary quarters?

**Subpart B—TQSE Methods of Reimbursement**

- 302–6.100 What am I paid under the TQSE–LP reimbursement method?
- 302–6.101 What am I paid under the TQSE–AE reimbursement method?
- 302–6.102 What am I paid under the TQSE–LS reimbursement method?
- 302–6.103 May my agency reduce my TQSE allowance below the “maximum allowable amount”?

**Subpart C—Agency Responsibilities**

- 302–6.200 How should we administer the TQSE allowance?
- 302–6.201 What governing policies must we establish for the TQSE allowance?
- 302–6.202 Under what circumstances may we authorize the TQSE allowance?
- 302–6.203 What factors should we consider in determining whether the TQSE allowance is actually necessary?
- 302–6.204 What factors should we consider in determining what TQSE method(s) to offer an employee?
- 302–6.205 Must we require transferees to sign a statement that TQSE will be incurred?
- 302–6.206 When must we make the TQSE–LS payment to the transferee?
- 302–6.207 What factors should we consider in determining whether quarters are temporary?

**Authority:** 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, as amended, 3 CFR, 1971–1975 Comp., p. 586.

**Subpart A—General Rules**

**Note 1 to subpart A:** Use of pronouns “I”, “you”, and their variants throughout this subpart refers to the employee, unless otherwise noted.

**§ 302–6.1 What are “temporary quarters subsistence expenses (TQSE)”?**

“Temporary quarters subsistence expenses” or “TQSE” are subsistence expenses incurred by an employee and/or the employee’s immediate family while occupying temporary quarters. TQSE does not include transportation

expenses incurred during occupancy of temporary quarters (see § 302–6.20).

**§ 302–6.2 What is the purpose of the TQSE allowance?**

The TQSE allowance is intended to reimburse an employee reasonably and equitably for subsistence expenses incurred when it is necessary to occupy temporary quarters incident to an official relocation or temporary change of station.

**§ 302–6.3 What are “temporary quarters”?**

The term “temporary quarters” refers to lodging obtained for the purpose of temporary occupancy from a private or commercial source incident to an official relocation or temporary change of station.

**§ 302–6.4 Am I eligible for a TQSE allowance?**

You are eligible for a TQSE allowance if you are an employee who is authorized to transfer to a new official station, including upon assignment to a temporary official station (see FTR 302–3.413(b)) and permanent assignment to a temporary official station (see FTR 302–3.427); and

- (a) Your new official station is located within the United States; and
- (b) Your old and new official stations are at least 50 miles apart (as measured by map distance) via a usually traveled surface route; and
- (c) Your new official station meets the 50-mile distance test (see § 302–2.6(a)).

**§ 302–6.5 Who is not eligible for a TQSE allowance?**

- (a) New appointees;
- (b) Employees assigned under the Government Employees Training Act (5 U.S.C. 4109);
- (c) Senior Executive Service (SES) employees making their last move home for the purpose of separation from Government service;
- (d) Employees returning from an overseas assignment for the purpose of separation from Government service; and
- (e) Employees who were granted a waiver to the 50-mile distance test under § 302–2.6(b).

**§ 302–6.6 Am I eligible for a TQSE allowance if I transfer to or from a foreign area?**

- (a) You may not receive a TQSE allowance under this part when you transfer to a foreign area. However, you may qualify for a comparable allowance under the Department of State Standardized Regulations (DSSR) (Government Civilians, Foreign Areas). (see § 302–3.101 of this chapter).
- (b) You may receive a TQSE allowance under this part when you

transfer from a foreign area and occupy temporary quarters in the U.S. You may also be authorized a comparable allowance, prescribed by the Department of State, at the foreign area preceding final departure subsequent to the necessary vacating of residence quarters. (see § 302–3.101 of this chapter).

**§ 302–6.7 Must my agency authorize payment of a TQSE allowance?**

No, TQSE is a discretionary allowance. Your agency determines whether it is in the Government's interest to pay TQSE.

**§ 302–6.8 Under what circumstances will I receive a TQSE allowance?**

You will receive a TQSE allowance if:

- (a) Your agency authorizes it before you occupy the temporary quarters;
- (b) Your relocation authorization specifies the TQSE method and the number of days allowed for you to receive TQSE;
- (c) You have signed a service agreement; and
- (d) You meet any additional conditions your agency has established.

**§ 302–6.9 Who may occupy temporary quarters at Government expense?**

Only you and/or your immediate family, as annotated on the relocation authorization, may occupy temporary quarters at Government expense.

**§ 302–6.10 Where may I/we occupy temporary quarters at Government expense?**

You and/or your immediate family may occupy temporary quarters in the U.S. at Government expense within reasonable proximity (approximately 50 miles) of the geographical area of your old and/or new official stations. Neither you nor your immediate family may be reimbursed for occupying temporary quarters at any other location, unless justified by special circumstances (*e.g.*, the temporary quarters location is subject to a Presidentially-Declared Disaster) that are reasonably related to your transfer.

**§ 302–6.11 May my immediate family and I occupy temporary quarters at different locations?**

Yes. Under various circumstances, you and your immediate family may need to occupy temporary quarters at different locations (*e.g.*, if you must report to the new official station while the immediate family delays the relocation to have family members complete the school year) (see § 302–6.16 regarding concurrent TQSE).

**§ 302–6.12 How soon may I/we begin occupying temporary quarters at Government expense?**

You may begin occupying temporary quarters at Government expense after your agency has authorized you to receive a TQSE allowance and you have signed a service agreement.

**§ 302–6.13 What is the latest period for which TQSE reimbursement may begin?**

The period must begin before the maximum time for completing all aspects of your relocation under § 302–2.9.

**§ 302–6.14 When does my authorized period for claiming TQSE reimbursement end?**

The period for claiming TQSE reimbursement ends at midnight on either the day before you and/or any member of your immediate family occupies permanent residence quarters (even if some, but not all household goods have been delivered to make the residence livable and now can be permanently occupied), or the day your authorized period for claiming TQSE reimbursement expires, whichever occurs first. (See § 302–6.207 for details).

**§ 302–6.15 May I and/or my immediate family occupy temporary quarters longer than the period for which I am authorized to claim TQSE reimbursement?**

Yes, but you will not be reimbursed for any of the expenses you incur during the unauthorized period.

**§ 302–6.16 May the period for which I am authorized to claim TQSE reimbursement for myself be different from that of my immediate family?**

No, the eligibility period for which you are authorized to claim TQSE reimbursement for yourself and for each member of your immediate family must run concurrently.

**§ 302–6.17 What effect do partial days of temporary quarters occupancy have on my authorized period for claiming TQSE reimbursement?**

Occupancy of temporary quarters is based on calendar days and partial days are counted as full days of TQSE. You may not receive reimbursement under both TQSE allowance and another subsistence expenses allowance within the same day, with one exception. If you claim TQSE reimbursement on the same day that en route travel per diem ends, your en route travel per diem will be computed under applicable partial day rules and you also may be reimbursed for actual TQSE you incur after 6 p.m. of that day.

**§ 302–6.18 How is my TQSE allowance affected if my temporary quarters become my permanent residence quarters?**

If your temporary quarters become your permanent residence quarters, you may receive a TQSE allowance only if you show in a manner satisfactory to your agency that you initially intended to occupy the quarters temporarily. You will not be entitled to TQSE once your agency determines that your temporary quarters are your permanent residence. (See § 302–6.207 for details).

**§ 302–6.19 May I receive a TQSE allowance if I am receiving another subsistence expenses allowance?**

No, unless your immediate family is claiming TQSE and you are performing separate official TDY travel, or you receive a cost-of-living allowance payable under 5 U.S.C. 5941 in addition to a TQSE allowance. (See § 302–6.17 for partial days for en route travel days.)

**§ 302–6.20 May I be reimbursed for transportation expenses incurred while I am occupying temporary quarters?**

Transportation expenses incurred in the vicinity of the temporary quarters, such as rental car or mileage for commuting to/from work, parking, and bus or mass transit, etc., are not TQSE expenses, and therefore, there is no authority to pay such expenses under TQSE.

**§ 302–6.21 May I be reimbursed for TQSE while occupying my permanent residence quarters at my old official station?**

Your agency may authorize TQSE for a reasonable time when your residence at your old official station becomes temporary and no longer suitable for permanent residence (*e.g.*, household goods have been shipped and are unavailable to you and your immediate family).

**§ 302–6.22 What methods may my agency use to reimburse me for TQSE?**

(a) Your agency may use one of the following TQSE methods:

- (1) TQSE—Lodgings-Plus (TQSE-LP);
- (2) TQSE—Actual Expense (TQSE-AE); or
- (3) TQSE—Lump Sum (TQSE-LS).

(b) Your agency will reimburse you for TQSE under the “lodgings-plus” method unless it offers you one or more of the alternate methods. If your agency makes multiple methods available to you, you may select the one you prefer; however, once your travel has begun, the authorized TQSE method may not be changed.

**§ 302–6.23 What is the “applicable per diem rate” under the TQSE reimbursement methods?**

The “applicable per diem rate” is the rate in effect for the locality at the old or new official station or combination thereof, wherever temporary quarters will be occupied. The applicable per diem rate could be the standard CONUS, CONUS non-standard area (NSA), or OCONUS non-foreign locality per diem rate as determined by GSA or the Department of Defense.

**§ 302–6.24 How may my TQSE reimbursement be affected if I relocate to, or currently occupy, temporary quarters in a Presidentially-Declared Disaster area?**

Your agency should consider delaying all non-essential relocations to Presidentially-Declared Disaster areas because the ability to secure temporary quarters lodgings in those areas may be compromised. If relocation cannot be delayed, or if you are already occupying temporary quarters that have been affected by the disaster, in a Presidentially-Declared Disaster area, for temporary quarters located within CONUS your agency may:

(a) Authorize you to occupy temporary quarters outside of the proximity requirements at § 302–6.10; and

(b) Authorize TQSE at the applicable locality per diem allowance under FTR §§ 301–11.100 through 301–11.102 of this subtitle or authorize actual expenses on an individual basis under FTR §§ 301–11.300 through 301–11.306 of this subtitle not to exceed 300 percent of the applicable per diem in accordance with § 301–11.303 of this subtitle; or

(c) Issue a blanket actual expense authorization. These authorizations must apply to a specific Presidential Disaster Declaration, and must end on the expiration date of the Declaration, or one year from the date the Declaration is issued, whichever is sooner. The maximum limit of 120 consecutive days that TQSE may be authorized is statutorily based and remains in effect in accordance with FTR § 302–6.29(a). A blanket authorization issued under this section shall not apply to any travel performed pursuant to chapter 301 of this subtitle.

**§ 302–6.25 Must I document my TQSE to receive reimbursement?**

(a) TQSE–LP method: You must file a voucher and provide documentation for your temporary quarters lodging expenses, lodging taxes, and other subsistence expenses over \$75. There is no requirement to document meals and incidental expenses.

(b) TQSE–AE method: You must file a voucher and document all temporary quarters lodging, lodging taxes, meals, and other subsistence expenses over \$75.

(c) TQSE–LS method: You are not required to document your subsistence expenses or file a voucher. However, your agency may require you to sign a statement or other document, and provide proof that you actually occupied temporary quarters, even if not for the full length of time on which the lump sum calculation was based. In the absence of sufficient proof of temporary quarters occupancy, your agency may demand repayment of the TQSE–LS payment in accordance with § 302–6.205.

**§ 302–6.26 May I receive an advance of funds for TQSE?**

(a) TQSE–LP and TQSE–AE methods: You may receive an advance of funds if authorized in accordance with your agency policy and § 302–2.24 of this chapter. Your agency may advance the amount of funds necessary to cover your estimated TQSE expenses for up to 30 days. Your agency may subsequently advance additional funds for periods up to 30 days.

(b) TQSE–LS method: You will not receive an advance of funds as your agency will offer a one-time lump sum payment as close as is reasonably possible to the time you will begin occupancy of temporary quarters; no additional payments will be authorized. If your TQSE–LS payment is more than adequate to cover your actual TQSE expenses, any balance belongs to you (e.g., your agency authorizes and you accept a lump sum payment for 15 days of TQSE and you vacate temporary quarters after 10 days, you would retain the remaining balance for the 5 days of TQSE not incurred).

**§ 302–6.27 Must I use a Government contractor-issued travel charge card for TQSE?**

Yes, you must use the Government contractor-issued travel charge card as the method of payment for all official relocation expenses, including TQSE, unless exempted under chapter 301, part 301–51 of this subtitle.

**§ 302–6.28 Are temporary quarters lodging taxes and laundry/dry cleaning expenses included in the TQSE amount?**

Temporary quarters lodging taxes are not included in your daily temporary quarters lodging rate and may be documented as a separate TQSE–LP or TQSE–AE miscellaneous expense. Lodging taxes for TQSE–LS are included in your overall lump sum amount. Laundry/dry cleaning expenses are

included in your incidental portion of the daily M&IE allowance, and are not separately reimbursed.

**§ 302–6.29 How long may I be authorized to claim TQSE reimbursement?**

(a) TQSE–LP and TQSE–AE methods: Your agency may initially authorize you to claim expenses in increments of 30 days or less, not to exceed 60 consecutive days. Your agency may authorize an extension of up to 60 additional consecutive days, for a maximum total of 120 consecutive days, if your agency determines that there is a compelling reason for you to continue occupying temporary quarters.

(b) TQSE–LS method: If your agency offers, and you select TQSE–LS, your agency may authorize a lump sum for each day authorized up to a maximum of 30 consecutive days of TQSE; no extensions are allowed under the lump sum payment method. You will not receive additional TQSE reimbursement if the lump sum payment is not adequate to cover your actual TQSE.

**§ 302–6.30 May my agency reduce my authorized number of TQSE days if I am authorized a househunting trip?**

Your agency may reduce the total number of days you are authorized for TQSE by the number of househunting days (e.g., instead of authorizing 60 days of TQSE your agency can authorize 50 days to account for your 10-day househunting trip); however, the percentage multiplier used for calculating TQSE may not be reduced based on the number of days used for a househunting trip.

**§ 302–6.31 What is a “compelling reason” warranting extension of my authorized period for claiming TQSE–LP or TQSE–AE reimbursement?**

A “compelling reason” is an event that is beyond your control and is acceptable to your agency. Examples include, but are not limited to when:

(a) Delivery of your household goods to your new residence is delayed due to availability of service providers, pandemics, strikes, customs clearance, hazardous weather, fires, floods or other acts of God, or similar events.

(b) You cannot occupy your new permanent residence because of unanticipated problems (e.g., delay in settlement on the new residence, or short-term delay in construction of the residence).

(c) You are unable to locate a permanent residence that is adequate for your family’s needs because of housing conditions at your new official station.

(d) Sudden illness, injury, your death or the death of your immediate family member.

**§ 302–6.32 May I interrupt occupancy of temporary quarters?**

Yes, your authorized period for claiming TQSE–LP and TQSE–AE reimbursement is measured on consecutive days, and once begun, normally continues to run whether or not you continue to occupy temporary quarters. However, you may interrupt your authorized period for claiming reimbursement in the following instances:

(a) For the time allowed for en route travel between the old and new official stations;

(b) For circumstances attributable to official necessity such as an intervening temporary duty assignment or military duty; or

(c) For a non-official necessary interruption such as hospitalization, approved sick leave, or other reasons beyond your control and acceptable to your agency.

**Subpart B—TQSE Methods of Reimbursement****§ 302–6.100 What am I paid under the TQSE–LP reimbursement method?**

Your agency will pay your actual daily temporary quarters lodging cost and a daily M&IE allowance not to exceed the single maximum lodging amount and the single maximum M&IE amount for the applicable per diem rate (see § 302–6.23) for the locality at the old or new official station or combination thereof, wherever temporary quarters will be occupied. Your TQSE expenses must be reasonable and if expenses exceed the maximum allowable amount, you will not be reimbursed for more than the maximum allowable amount. The “maximum allowable amount” is the “maximum daily amount” multiplied by the number of days you actually incur TQSE not to exceed the number of days authorized, taking into account that the rates change after 30 days in temporary quarters. The “maximum daily amount” is determined by adding the rates for you and each member of your immediate family authorized to occupy temporary quarters:

(a) For the first 30 days of temporary quarters:

(1) You and/or your unaccompanied spouse or domestic partner may receive 100 percent of the temporary quarters lodging portion of the applicable per diem rate and 100 percent of the M&IE portion of the applicable per diem rate.

(2) Your accompanied spouse, domestic partner, or a member of your immediate family who is age 12 or older may receive 50 percent of the temporary quarters lodging portion of the

applicable per diem rate and 50 percent of the M&IE portion of the applicable per diem rate.

(3) A member of your immediate family who is under age 12 may receive 40 percent of the temporary quarters lodging portion of the applicable per diem rate and 40 percent of the M&IE portion of the applicable per diem rate.

(b) For the second 30 days of temporary quarters:

(1) You and/or your unaccompanied spouse or domestic partner<sup>2</sup> may receive 75 percent of the temporary quarters lodging portion of the applicable per diem rate and 75 percent of the M&IE portion of the applicable per diem rate.

(2) Your accompanied spouse, domestic partner, or a member of your immediate family who is age 12 or older may receive 45 percent of the temporary quarters lodging portion of the applicable per diem rate and 45 percent of the M&IE portion of the applicable per diem rate.

(3) A member of your immediate family who is under age 12 may receive 35 percent of the temporary quarters lodging portion of the applicable per diem rate and 35 percent of the M&IE portion of the applicable per diem rate.

(c) For any additional authorized days of temporary quarters:

(1) You and/or your unaccompanied spouse or domestic partner<sup>2</sup> may receive 55 percent of the temporary quarters lodging portion of the applicable per diem rate and 55 percent of the M&IE portion of the applicable per diem rate.

(2) Your accompanied spouse, domestic partner, or a member of your immediate family who is age 12 or older may receive 40 percent of the temporary quarters lodging portion of the applicable per diem rate and 40 percent of the M&IE portion of the applicable per diem rate.

(iii) A member of your immediate family who is under age 12 may receive 30 percent of the temporary quarters lodging portion of the applicable per diem rate and 30 percent of the M&IE portion of the applicable per diem rate.

**Note 1 to 302–6.100:** Temporary quarters lodging and M&IE remain as separate maximum amounts for purposes of calculating TQSE–LP. Examples of TQSE calculations are published in an FTR bulletin at <https://gsa.gov/ftrbulletins>.

**Note 2 to 302–6.100:** That is, when your spouse or domestic partner necessarily occupies temporary quarters in lieu of yourself or in a location separate from you.

**§ 302–6.101 What am I paid under the TQSE–AE reimbursement method?**

Your agency will pay your actual TQSE incurred, provided the expenses

are reasonable and if expenses exceed the maximum allowable amount, you will not be reimbursed for more than the maximum allowable amount. The “maximum allowable amount” is the “maximum daily amount” multiplied by the number of days you actually incur TQSE not to exceed the number of days authorized, taking into account that the rates change after 30 days in temporary quarters. The “maximum daily amount”<sup>1</sup> is determined by using the applicable per diem rate (see § 302–6.23) for the locality at the old or new official station or combination thereof, wherever temporary quarters will be occupied, and adding the rates for you and each member of your immediate family authorized to occupy temporary quarters:

(a) For the first 30 days of temporary quarters:

(1) You and/or your unaccompanied spouse or domestic partner<sup>2</sup> may receive 100 percent of the applicable per diem rate.

(2) Your accompanied spouse, domestic partner, or a member of your immediate family who is age 12 or older may receive 50 percent of the applicable per diem rate.

(3) A member of your immediate family who is under age 12 may receive 40 percent of the applicable per diem rate.

(b) For the second 30 days of temporary quarters:

(1) You and/or your unaccompanied spouse or domestic partner<sup>2</sup> may receive 75 percent of the applicable per diem rate.

(2) Your accompanied spouse, domestic partner, or a member of your immediate family who is age 12 or older may receive 45 percent of the applicable per diem rate.

(3) A member of your immediate family who is under age 12 may receive 35 percent of the applicable per diem rate.

(c) For any additional days of temporary quarters:

(1) You and/or your unaccompanied spouse or domestic partner<sup>2</sup> may receive 55 percent of the applicable per diem rate.

(2) Your accompanied spouse, domestic partner, or a member of your immediate family who is age 12 or older may receive 40 percent of the applicable per diem rate.

(3) A member of your immediate family who is under age 12 may receive 30 percent of the applicable per diem rate.

**Note 1 to 302–6.101:** Under TQSE–AE, separate amounts for temporary quarters lodging and M&IE may be combined to produce a single maximum daily amount to



allow some of the M&IE rate to offset the lodging cost. Examples of TQSE calculations are published in an FTR bulletin at <https://gsa.gov/ftrbulletins>.

**Note 2 to 302–6.101:** That is, when your spouse or domestic partner necessarily occupies temporary quarters in lieu of yourself or in a location separate from you.

**§ 302–6.102 What am I paid under the TQSE–LS reimbursement method?**

(a) For yourself, or your unaccompanied spouse or domestic partner if you are receiving a lump sum for TQSE, multiply the number of days (up to 30 days) your agency authorizes TQSE–LS by 75 percent of the applicable per diem rate (see § 302–6.23) for the locality at the old or new official station or combination thereof, wherever temporary quarters will be occupied.

(b) For each member of your immediate family, multiply the same number of days by 25 percent of the same per diem rate, as described in paragraph (a) of this section.

(c) Your lump sum payment will be the sum of the calculations in paragraphs (a) and (b) of this section.

**Note 1 302–6.102:** That is, when your spouse or domestic partner necessarily occupies temporary quarters in lieu of yourself or in a location separate from you. Examples of TQSE calculations are published in an FTR bulletin at <https://gsa.gov/ftrbulletins>.

**§ 302–6.103 May my agency reduce my TQSE allowance below the “maximum allowable amount”?**

Yes, if the estimated daily amount of your TQSE is determined in advance to be lower than the maximum daily amount, your agency may reduce the maximum allowable amount to your expected expenses provided the new applicable amount is annotated on the relocation authorization before you occupy temporary quarters. (However, see § 302–6.30 regarding househunting trips).

**Subpart C—Agency Responsibilities**

**Note to subpart C:** Use of pronouns “we”, “you”, and their variants throughout this subpart refers to the agency.

**§ 302–6.200 How should we administer the TQSE allowance?**

Temporary quarters should be authorized only if, and only for as long as necessary until the employee and the employee’s immediate family can move into permanent residence quarters. You must administer the TQSE allowance to minimize or avoid other relocation expenses.

**§ 302–6.201 What governing policies must we establish for the TQSE allowance?**

You must establish policies and procedures governing:

- (a) When you will authorize temporary quarters for employees;
- (b) Who will determine if temporary quarters is appropriate in each situation;
- (c) What method of TQSE will be authorized;
- (d) Who will determine the appropriate period of time for which TQSE reimbursement will be authorized, including approval of extensions and interruptions of temporary quarters occupancy;
- (e) Who will determine whether quarters were indeed temporary; and
- (f) Who will determine, and in what instances, to issue the authorizations at § 302–6.24, including a blanket authorization for actual expenses.

**§ 302–6.202 Under what circumstances may we authorize the TQSE allowance?**

You may authorize a TQSE allowance on an individual-case basis when use of temporary quarters is justified in connection with an employee’s transfer to a new official station, including upon assignment to a temporary official station and permanent assignment to a temporary official station. You may not authorize a TQSE allowance for vacation purposes or other reasons unrelated to the transfer.

**§ 302–6.203 What factors should we consider in determining whether the TQSE allowance is actually necessary?**

The factors you should consider include:

- (a) The length of time the employee should reasonably be expected to occupy their residence at the old official station before reporting for duty at the new official station. An employee and the employee’s immediate family should continue to occupy the residence at the old official station for as long as practicable to avoid the necessity for temporary quarters.
- (b) The existence of less expensive alternatives. If a less expensive alternative to the TQSE allowance exists that will enable the employee to find permanent quarters at the new official station, you should consider such an alternative. For example, authorize a househunting trip instead of temporary quarters if it would cost less overall.
- (c) The existence of other opportunities to arrange for permanent quarters. Consider whether the employee had adequate opportunity to arrange for permanent quarters. For example, you should not authorize temporary quarters if the employee had adequate opportunity during an

extended temporary duty assignment or long-term temporary change of station that became permanent, to arrange for permanent quarters.

**§ 302–6.204 What factors should we consider in determining what TQSE method(s) to offer an employee?**

When determining what TQSE method(s) to offer an employee the following factors should be considered:

(a) *Ease of administration.* You should consider the administrative requirements for each method of TQSE. Factors such as obtaining and reviewing receipts to verify validity, accuracy, and reasonableness of each expense carry an administrative burden to the employee, their immediate family, and you.

(b) *Cost consideration.* You should weigh the cost of each alternative. TQSE–LP and TQSE–AE reimbursement may extend up to 120 days, while the TQSE–LS payment is limited to a maximum of 30 days.

(c) *Treatment of employee.* The employee will be reimbursed for TQSE under the “lodgings-plus” method unless you offer one or more of the alternate methods. If you make all methods available to the employee, the employee is allowed to select any one of the methods. You should therefore consider employee morale and productivity against actual cost in determining which method(s) to offer.

**§ 302–6.205 Must we require transferees to sign a statement that TQSE will be incurred?**

(a) Transferees authorized TQSE–LP or TQSE–AE are not required to sign a statement asserting that they will occupy temporary quarters since they must document temporary quarters lodging expenses.

(b) Transferees electing the TQSE–LS payment option if offered by you, must sign a statement, which should be included as part of the service agreement, asserting that they will occupy temporary quarters and will incur TQSE. If a lump sum amount was paid, and if no TQSE are incurred, the transferee must return all monies received for the TQSE–LS payment to the agency.

**§ 302–6.206 When must we make the TQSE–LS payment to the transferee?**

You must pay the transferee the TQSE–LS payment before the occupancy of temporary quarters begins. You should make the TQSE–LS payment as close as is reasonably possible to the time that the transferee will begin occupancy of temporary quarters.



**§ 302–6.207 What factors should we consider in determining whether quarters are temporary?**

In determining whether quarters are “temporary”, you should consider factors such as reasonable time when the employee’s residence at the old official station becomes temporary and no longer suitable for permanent residence (e.g., household goods have been shipped and are unavailable to the employee and their immediate family), the duration of the lease, movement of household goods into the quarters, the type of quarters, the employee’s expressions of intent, attempts to secure a permanent dwelling, and the length of time the employee occupies the quarters.

**PART 302–17—TAXES ON RELOCATION EXPENSES**

■ 4. The authority for part 302–17 continues to read as follows:

**Authority:** 5 U.S.C. 5724b; 5 U.S.C 5738; E.O. 11609, as amended, 3 CFR, 1971–1975 Comp., p.586.

**§ 302–17.21 [Amended]**

■ 5. Amend § 302–17.21(d) by removing “actual expense or lump sum method” in the second sentence and adding in its place “lodgings-plus, actual expense, or lump sum method”.

[FR Doc. 2023–10695 Filed 5–22–23; 8:45 am]

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Parts 223 and 224**

[Docket No. 230517–0132; RTID 0648–XR127]

**Endangered and Threatened Wildlife; 90-Day Finding on a Petition To List the Smalltail Shark as Threatened or Endangered Under the Endangered Species Act**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

**ACTION:** 90-Day petition finding, request for information, and initiation of status review.

**SUMMARY:** We (NMFS) announce a positive 90-day finding on a petition to list the smalltail shark (*Carcharhinus porosus*) as threatened or endangered under the Endangered Species Act (ESA). The petitioner also requests that we designate critical habitat. We find

that the petition and information readily available in our files present substantial scientific or commercial information indicating that listing the smalltail shark as threatened or endangered may be warranted. Therefore, we are commencing a review of the status of the smalltail shark to determine whether listing under the ESA is warranted. To support a comprehensive status review, we are soliciting scientific and commercial data regarding this species. **DATES:** Scientific and commercial data pertinent to the petitioned action must be received by July 24, 2023.

**ADDRESSES:** You may submit comments on this document, identified by NOAA–NMFS–2023–0031 by the following method:

**Electronic Submissions:** Submit all electronic public comments via the Federal eRulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA–NMFS–2023–0031 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

**Instructions:** Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

Interested persons may obtain a copy of the petition online at the NMFS website: <https://www.fisheries.noaa.gov/national/endangered-species-conservation/petitions-awaiting-90-day-findings>.

**FOR FURTHER INFORMATION CONTACT:** Joe Heublein, NMFS Southeast Region, 727–209–5962 or Adam Brame, NMFS Southeast Region, 727–209–5958.

**SUPPLEMENTARY INFORMATION:**

**Background**

On October 31, 2022, we received a petition from the Center for Biological Diversity to list the smalltail shark (*Carcharhinus porosus*) as an endangered or threatened species under the ESA, and to designate critical habitat concurrent with the listing. The petition also requests that, if we determine the smalltail shark warrants listing as a threatened species, we promulgate a protective regulation

under section 4(d) of the ESA, and requests that we promulgate a regulation under section 4(e) of the ESA for species similar in appearance to the smalltail shark. The petitioner asserts that fishery overexploitation for meat, fins, oil, and other byproducts, in addition to climate change, habitat degradation, pollution, inadequacy of regulatory mechanisms, and life history characteristics, is driving this species towards extinction. Copies of this petition are available from us (see **ADDRESSES**, above).

**ESA Statutory and Regulatory Provisions and Evaluation Framework**

Section 4(b)(3)(A) of the ESA of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires, to the maximum extent practicable, that within 90 days of receipt of a petition to list a species as threatened or endangered, the Secretary of Commerce make a finding on whether that petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted, and to promptly publish such finding in the **Federal Register** (16 U.S.C. 1533(b)(3)(A)). When we find that substantial scientific or commercial information in a petition indicates the petitioned action may be warranted (a “positive 90-day finding”), we are required to promptly commence a review of the status of the species concerned during which we conduct a comprehensive review of the best available scientific and commercial information. In such cases, we conclude the review with a finding as to whether, in fact, the petitioned action is warranted within 12 months of receipt of the petition. Because the finding at the 12-month stage is based on a more thorough review of the available information, as compared to the narrow scope of review at the 90-day stage, a “may be warranted” finding does not prejudice the outcome of the status review.

Under the ESA, a listing determination must address a species, which is defined to also include subspecies and, for any vertebrate species, any distinct population segment (DPS) that interbreeds when mature (16 U.S.C. 1532(16)). A joint NMFS–U.S. Fish and Wildlife Service (USFWS) (jointly, “the Services”) policy clarifies the agencies’ interpretation of the phrase “distinct population segment” for the purposes of listing, delisting, and reclassifying a species under the ESA (61 FR 4722; February 7, 1996). A species, subspecies, or DPS is “endangered” if it is in danger of extinction throughout all or a significant portion of its range, and “threatened” if it is likely to become endangered within