

## Background

The FAA is planning to decommission the VOR portion of the Roseau, MN, VOR/DME in August, 2023. The Roseau VOR was one of the candidate VORs identified for discontinuance by the FAA's VOR MON program and listed in the Final policy statement notice, "Provision of Navigation Services for the Next Generation Air Transportation System (NextGen) Transition to Performance-Based Navigation (PBN) (Plan for Establishing a VOR Minimum Operational Network)," published in the **Federal Register** of July 26, 2016 (81 FR 48694), Docket No. FAA-2011-1082.

Although the VOR portion of the Roseau VOR/DME NAVAID is planned for decommissioning, the co-located DME portion of the NAVAID is being retained to support NextGen PBN flight procedure requirements.

The VOR Federal airway affected by the Roseau VOR decommissioning is V-171. With the planned decommissioning of the Roseau VOR, the remaining ground-based NAVAID coverage in the area is insufficient to enable the continuity of the affected airway. As such, the proposed modification to V-171 would result in the airway being shortened due to the Roseau VOR/DME end point being removed.

To overcome the proposed modification, instrument flight rules (IFR) traffic could use the adjacent VOR Federal airway V-430 for conventional navigation or Area Navigation (RNAV) routes T-383 and T-407 for GPS navigation by properly equipped aircraft. Additionally, pilots equipped with RNAV capabilities could also navigate point to point using the existing fixes that would remain in place to support continued operations though the affected area. IFR aircraft may also receive air traffic control (ATC) radar vectors to fly around or through the affected area. Visual flight rules (VFR) pilots who elect to navigate via the affected VOR Federal airways could also take advantage of the adjacent ATS routes or ATC services listed previously.

## The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to amend VOR Federal airway V-171 due to the planned decommissioning of the VOR portion of the Roseau, MN, VOR/DME. The proposed airway action is described below.

V-171: V-171 currently extends between the Lexington, KY, VOR/DME and the Joliet, IL, VOR/DME; and between the Nodine, MN, VOR/Tactical

Air Navigation (VORTAC) and the Roseau, MN, VOR/DME. The FAA proposes to remove the airway segment between the Grand Forks, ND, VOR/DME and the Roseau, MN, VOR/DME. As amended, the airway would be changed to extend between the Lexington VOR/DME and the Joliet VOR/DME; and between the Nodine VORTAC and the Grand Forks VOR/DME.

The NAVAID radials contained in the airway description below are unchanged and stated in True degrees.

VOR Federal airways are published in paragraph 6010(a) of FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airway listed in this document would be published subsequently in FAA Order JO 7400.11.

FAA Order JO 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

## Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

## Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures" prior to any FAA final regulatory action.

## List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

## The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389.

### § 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

*Paragraph 6010(a) Domestic VOR Federal Airways*

\* \* \* \* \*

### V-171 [Amended]

From Lexington, KY; INT Lexington 251° and Louisville, KY, 114° radials; Louisville; Terre Haute, IN; Danville, IL; Peotone, IL; INT Peotone 281° and Joliet, IL, 173° radials; to Joliet. From Nodine, MN; INT Nodine 298° and Farmington, MN, 124° radials; Farmington; Darwin, MN; Alexandria, MN; INT Alexandria 321° and Grand Forks, ND, 152° radials; to Grand Forks.

\* \* \* \* \*

Issued in Washington, DC, on December 6, 2022.

**Scott M. Rosenbloom,**

*Manager, Airspace Rules and Regulations.*

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## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Parts 229, 232, 240, 249, and 274

[Release Nos. 34-96458; IC-34768; File No. S7-21-21]

**RIN 3235-AM94**

### Reopening of Comment Period for Share Repurchase Disclosure Modernization

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rule; reopening of comment period.

**SUMMARY:** The Securities and Exchange Commission ("Commission") is reopening the comment period for its proposal, *Share Repurchase Disclosure Modernization*, Exchange Act Release No. 34-93783 (Dec. 15, 2021) ("Proposing Release"). The Commission proposed amendments to modernize and improve disclosure about

repurchases of an issuer's equity securities that are registered under the Securities Exchange Act of 1934. Specifically, the proposed amendments would require an issuer to provide more timely disclosure on a new Form SR regarding purchases of its equity securities for each day that it, or an affiliated purchaser, makes a share repurchase. The proposed amendments would also enhance the existing periodic disclosure requirements about these purchases. The Commission subsequently reopened the comment period for the Proposing Release in *Resubmission of Comments and Reopening of Comment Periods for Several Rulemaking Releases Due to a Technological Error in Receiving Certain Comments*, Exchange Act Release No. 34-96005 (Oct. 7, 2022). In addition, after the proposed amendments were published for public comment, an excise tax on share repurchases was signed into law. A staff memorandum was added to the public comment file on December 7, 2022 to analyze the impact of the new excise tax on the potential economic effects of the proposed amendments. The Commission is reopening the comment period to allow interested persons the opportunity to analyze and comment on the additional analysis.

**DATES:** The comment period for the proposed amendments published February 15, 2022, at 87 FR 8443, which was initially reopened on October 7, 2022, at 87 FR 63016, is again reopened. Comments should be received on or before January 11, 2023.

**ADDRESSES:** Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's internet comment form (<https://www.sec.gov/how-to-submit-comments>); or

#### *Paper Comments*

- Send paper comments to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number S7-21-21. This file number should be included on the subject line if email is used. To help us process and review your comments more efficiently, please use only one method of submission. The Commission will post all comments on the Commission's website (<http://www.sec.gov/rules/proposed.shtml>). Comments also are available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE,

Washington, DC 20549-1090, on official business days between the hours of 10 a.m. and 3 p.m. Operating conditions may limit access to the Commission's public reference room. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

Studies, memoranda, or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on our website. To ensure direct electronic receipt of such notifications, sign up through the "Stay Connected" option at [www.sec.gov](http://www.sec.gov) to receive notifications by email.

**FOR FURTHER INFORMATION CONTACT:** John Fieldsend, Special Counsel, Office of Rulemaking, at (202) 551-3460, Division of Corporation Finance; and, with respect to the application of the proposal to investment companies, Quinn Kane, Special Counsel, at (202) 551-6792, Investment Company Regulation Office, Division of Investment Management; U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** As described more fully in the Proposing Release, the Commission proposed changes to the requirements for disclosure of purchases of equity securities made by or on behalf of an issuer or any affiliated purchaser.<sup>1</sup> The proposed amendments were intended to improve the quality, relevance, and timeliness of information related to issuer share repurchases. The proposed amendments would modernize and improve the disclosure required about repurchases of an issuer's equity securities by:

- Requiring daily repurchase disclosure on a new Form SR, which would be furnished to the Commission one business day after execution of an issuer's share repurchase order;
- Amending Item 703<sup>2</sup> of Regulation S-K,<sup>3</sup> with corresponding changes to Item 16E of Form 20-F<sup>4</sup> for foreign private issuers and Item 9 of Form N-CSR for certain registered-closed end

<sup>1</sup> In the Proposing Release, the term "issuer" included affiliated purchasers and any person acting on behalf of the issuer or an affiliated purchaser. The term "affiliated purchaser" as used in Item 703 is defined in 17 CFR 10b-18(a)(3).

<sup>2</sup> 17 CFR 229.703.

<sup>3</sup> 17 CFR 229.10 through 229.1305.

<sup>4</sup> 17 CFR 249.220f.

investment management companies,<sup>5</sup> to require additional detail regarding the structure of an issuer's repurchase program and its share repurchases; and

- Requiring information disclosed pursuant to Item 703, Item 16E of Form 20-F, Item 9 of Form N-CSR, and new Form SR to be reported using a structured data language (specifically, Inline eXtensible Business Reporting Language).

After the proposed amendments were published for public comment, The Inflation Reduction Act of 2022 ("Act") was signed into law on August 16, 2022.<sup>6</sup> Section 10201 of the Act adds new section 4501 of the Internal Revenue Code of 1986 ("Internal Revenue Code"),<sup>7</sup> which imposes upon "covered corporations" a non-deductible excise tax equal to one percent of the fair market value of any stock of the corporation which is repurchased by such corporation during the taxable year. Under the Act, a "covered corporation" is any domestic corporation<sup>8</sup> the stock of which is traded on an "established securities market" (within the meaning of section 7704(b)(1) of the Internal Revenue Code<sup>9</sup>). The excise tax applies to share repurchases after December 31, 2022.<sup>10</sup>

The staff of the Division of Economic and Risk Analysis has prepared a memorandum that discusses potential economic effects of the new excise tax

<sup>5</sup> 17 CFR 249.331 and 17 CFR 274.128.

<sup>6</sup> See Public Law 117-169, 136 Stat. 1818 (2022).

<sup>7</sup> See 26 U.S.C. 4501.

<sup>8</sup> A domestic corporation means a corporation created or organized in the U.S. or under the law of the U.S. or of any State or the District of Columbia. See 26 U.S.C. 7701(a)(4). Section 4501(d) of the Act also applies to certain domestic subsidiaries that purchase the stock of their non-U.S. corporate parents, the shares of which are traded on an established securities market.

<sup>9</sup> See 26 U.S.C. 7704(b)(1). The use of "established securities market" in section 7704(b)(1) is defined in 26 CFR 1.7704-1(b). The definition includes national securities exchanges registered under Section 6 of the Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.*, national securities exchanges exempt from registration because of the limited volume of transactions, certain foreign securities exchanges, regional or local exchanges, and certain interdealer quotation systems.

<sup>10</sup> Additionally, Section 10201(e) of the Act sets forth certain exceptions to the applicability of the excise tax. Among these exceptions are repurchases that are treated as a dividend under the Internal Revenue Code and repurchases made by a real estate investment trust or by a "regulated investment company." Section 851(a) of the Internal Revenue Code generally defines "regulated investment companies" as domestic corporations that are registered under the Investment Company Act of 1940 ("Investment Company Act"), 15 U.S.C. 80a-2(c), as management companies or unit investment trusts, have in effect an election under the Investment Company Act to be treated as business development companies, or are certain common trust funds or similar funds. See 26 U.S.C. 851(a).

on the incidence and level of share repurchases,<sup>11</sup> which are a part of the market baseline for the proposed amendments. We believe that the information presented in the Staff Memorandum has the potential to be informative for evaluating the proposed amendments in light of this recently enacted legislation. We are, therefore, reopening the comment period for an additional 30 days to permit interested parties to comment on the Staff Memorandum, which has been included in the comment file. In addition to the requests for comment included in the Proposing Release, the Commission specifically seeks comments on the following:

#### Requests for Comment

1. Would the Act's new excise tax affect the proposed amendments' potential economic effects?<sup>12</sup> If so, what would the specific impact (or impacts) of the new excise tax be? How would the new excise tax interact with the effects of the direct and indirect costs of the proposed amendments on issuers and investors?

2. The Staff Memorandum estimates that,<sup>13</sup> based on year 2020 (2021) data, of the approximately 3,300 (3,600) issuers engaged in repurchases and subject to the proposed amendments, approximately 2,000 (2,300) issuers would be affected by the excise tax. Do you agree with these estimates? If you do not agree with these estimates, please explain why. Please also provide alternative estimates and explain why you believe those alternatives would be more accurate.

3. Do you agree with the qualitative analysis in the Staff Memorandum of the likely directional effects of the new excise tax on share repurchases?<sup>14</sup> Is there other, additional research the staff should consider? If so, please discuss this research and why you believe it is relevant to the analysis.

4. What is the likelihood, if any, given the Act's new excise tax that issuers will replace share repurchases with dividends, including special dividends?<sup>15</sup> Is it administratively more costly to distribute a dividend, or special dividend, as a means to return

cash to shareholders as compared to repurchases? If so, please discuss how the costs differ.

5. The Staff Memorandum states that issuers subject to the proposed amendments, but that are exempted from the new excise tax, would not be directly affected by the new excise tax (but they may incur indirect effects).<sup>16</sup> Are there any additional impacts that the staff should consider? Would these issuers incur any indirect effects? For example, the Staff Memorandum includes as possible indirect effects competitive spillovers of a decrease in repurchases among issuers subject to the excise tax, or changes in investor sentiment regarding repurchases in response to the decline in share repurchases among a considerable number of issuers. Would competitive spillovers or changes in investor sentiment affect share repurchase activity by issuers subject to the proposed amendments, but that are exempted from the new tax? If so, what would these impacts be? What other indirect effects would occur?

6. The Staff Memorandum states that the excise tax is not expected to change the direction of the expected economic effects of the proposed amendments with respect to any particular share repurchase that takes place, but that it may affect the total number of share repurchases that occur, and thus may affect the aggregate impact of the proposed amendments.<sup>17</sup> Do you agree? Please provide the reasoning for your response.

7. The Staff Memorandum states that the categories of costs and benefits described in the Proposing Release would likely remain the same, but the magnitude may change as a result of the excise tax.<sup>18</sup> Do you agree with this assessment? If not, what other costs or benefits should be considered in assessing the potential economic effects of the proposed amendments?

8. Do you agree with the conclusion in the Staff Memorandum that the general efficiency, competition, and capital formation considerations discussed in the Proposing Release are expected to continue to apply except for the potential competitive effects discussed in the Staff Memorandum?<sup>19</sup>

We request and encourage any interested person to submit comments regarding the proposed amendments, specific issues discussed in this release, the Staff Memorandum, or the Proposing Release, and other matters

that may have an effect on the proposed amendments. Commenters are urged to be as specific as possible; when commenting, it would be most helpful if you include the reasoning behind your position or recommendation. All comments received to date on the proposed amendments will be considered and need not be resubmitted.

By the Commission.

Dated: December 7, 2022.

**J. Mathew DeLesDernier,**

*Deputy Secretary.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Parts 10, 17, and 21

[Docket No. FWS-HQ-MB-2022-0036; FXMB1232090000//223//FF09M30000]

RIN 1018-BG04

#### General Provisions; Revised List of Migratory Birds

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

**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose to revise the List of Birds protected by the Migratory Bird Treaty Act (MBTA) by both adding and removing species. Reasons for the changes to the list include adding species based on new taxonomy and new evidence of natural occurrence in the United States or U.S. territories, removing species no longer known to occur within the United States or U.S. territories, and changing names to conform to accepted use. The net increase of 13 species (16 added and three removed) would bring the total number of species protected by the MBTA to 1,106. We also propose to revise the scientific name of a species subject to specific migratory-bird-permit regulations and to revise corresponding entries for several migratory bird species that are also listed on the List of Endangered and Threatened Wildlife under the Endangered Species Act to reflect currently accepted taxonomy and nomenclature.

We regulate the taking, possession, transportation, sale, purchase, barter, exportation, and importation of migratory birds. An accurate and up-to-date list of species protected by the MBTA is essential for public notification, regulatory, and law-

<sup>11</sup> Memorandum of the Staff of the Division of Economic and Risk Analysis, *Supplemental Analysis of the Potential Implications of the Recently Enacted Excise Tax on Share Repurchases for the Economic Effects of Share Repurchase Disclosure Modernization Amendments* (Dec. 7, 2022) ("Staff Memorandum"), available at <https://www.sec.gov/comments/s7-21-21/s72121.htm>.

<sup>12</sup> See Staff Memorandum, *supra* note 11, Section II.

<sup>13</sup> See *id.*, *supra* note 11, Section II.A.

<sup>14</sup> See *id.*, *supra* note 11, Section II.C.

<sup>15</sup> See *id.*, *supra* note 11.

<sup>16</sup> See *id.*, *supra* note 11.

<sup>17</sup> See *id.*, *supra* note 11, Section III.A.

<sup>18</sup> See *id.*, *supra* note 11, Section III.B.

<sup>19</sup> See *id.*, *supra* note 11, Section III.D.