Daniel J. Basta,
Director for the Office of National Marine Sanctuaries.

Cynthia K. Dohner,
Regional Director, Fish and Wildlife Service.

DEPARTMENT OF THE TREASURY
Internal Revenue Service

26 CFR Part 53
[REG–144267–11]
RIN 1545–BK76

Examples of Program-Related Investments

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that provide guidance to private foundations on program-related investments. These proposed regulations provide a series of new examples illustrating investments that qualify as program-related investments. In addition to private foundations, these proposed regulations affect foundation managers who participate in the making of program-related investments.

DATES: Comments and requests for a public hearing must be received by July 18, 2012.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–144267–11), room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–144267–11), Courier’s Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at http://www.regulations.gov/ (IRS REG–144267–11).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Courtney D. Jones at (202) 622–6070; concerning submissions of comments and requests for a public hearing, Oluwafumilayo Taylor, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:
Background
Section 4944(a) of the Internal Revenue Code (Code) imposes an excise tax on a private foundation that makes an investment that jeopardizes the carrying out of any of the private foundation’s exempt purposes (a “jeopardizing investment”). Section 4944(a) also imposes an excise tax on foundation managers who knowingly participate in the making of a jeopardizing investment. Section 4944(b) imposes additional excise taxes on private foundations and foundation managers when investments are not timely removed from jeopardy.

Generally, under §5.4944–1(a)(2), a jeopardizing investment occurs when, based on the facts and circumstances at the time the investment is made, foundation managers fail to exercise ordinary business care and prudence in providing for the long- and short-term financial needs of the foundation. The determination of whether an investment is a jeopardizing investment is made on an investment-by-investment basis, taking into account the private foundation’s entire portfolio. In exercising the requisite standard of care and prudence, foundation managers may take into account the expected investment return, price volatility, and the need for portfolio diversification.

Section 4944(c) excepts program-related investments (“PRIs”) from treatment as jeopardizing investments. The regulations under section 4944(c) define a PRI as an investment: (1) The primary purpose of which is to accomplish one or more of the purposes described in section 170(c)(2)(B); (2) no significant purpose of which is the production of income or the appreciation of property; and (3) no purpose of which is to accomplish one or more of the purposes described in section 170(c)(2)(D) (attempting to influence legislation or participating in or intervening in any political campaign).

An investment is made primarily to accomplish one or more of the purposes described in section 170(c)(2)(B) (referred to as “charitable purposes”) if it significantly furthers the accomplishment of the private foundation’s exempt activities and would not have been made but for the relationship between the investment and the accomplishment of those exempt activities. In determining whether a significant purpose of an investment is the production of income or the appreciation of property, §5.4944–3(a)(2)(iii) provides that it shall be relevant whether investors who are engaged in the investment solely for the production of income would be likely to make the investment on the same terms as the private foundation.

The regulations under other Code sections in Chapter 42 accord special tax treatment to PRIs. For example, §5.4942(a)–2(c)(3)(i)(d) excludes PRIs from the assets a private foundation takes into account when determining how much it must distribute under section 4942 as a “distributable amount” for the taxable year. In addition, §5.4942(a)–3(a)(2)(i) generally includes distributions that qualify as PRIs as “qualifying distributions” for purposes of meeting the distribution requirements under section 4942. Section 53.4943–10(b) excludes PRIs from being treated as business holdings for the purposes of calculating excess business holdings subject to excise tax under section 4943.

Sections 53.4945–5(b)(4) and 53.4945–6(c)(1)(i) also make clear that PRIs will not constitute taxable expenditures under section 4945, provided the private foundation exercises “expenditure responsibility” in circumstances in which it is required to do so. Among other expenditure responsibility requirements, a private foundation must require a written commitment from the recipient of the PRI that the funds received will be used only for the purposes of the program-related investment. As noted, the primary purpose of a program-related investment must be the accomplishment of a charitable purpose.

Section 53.4944–3(b) contains nine examples illustrating investments that qualify as PRIs and one example of an investment that does not qualify as a PRI. The existing examples focus on domestic situations principally involving economically disadvantaged individuals and deteriorated urban areas.

The Treasury Department and the IRS are aware that the private foundation community would find it helpful if the regulations could include additional PRI examples that reflect current investment practices and illustrate certain principles, including that: (1) An activity conducted in a foreign country furthers a charitable purpose if the same activity would further a charitable purpose if conducted in the United States; (2) the charitable purposes served by a PRI are not limited to situations involving economically disadvantaged individuals and deteriorated urban areas; (3) the recipients of PRIs need not be within a charitable class if they are the instruments for furthering a charitable purpose; (4) a potentially high rate of return does not automatically prevent an investment from qualifying as program-related; (5) PRIs can be achieved through a variety of
The proposed regulations add nine new examples that illustrate that a wider range of investments qualify as PRIs than the range currently presented in §53.4944–3(b). The proposed regulations do not modify the existing regulations; rather, they provide additional examples that illustrate the application of the existing regulations. Generally, the charitable activities illustrated in the new examples are based on published guidance and on financial structures described in private letter rulings.

The new examples demonstrate that a PRI may accomplish a variety of charitable purposes, such as advancing science, combating environmental deterioration, and promoting the arts. Several examples also demonstrate that an investment that funds activities in one or more foreign countries, including investments that alleviate the impact of a natural disaster or that fund educational programs for poor individuals, may further the accomplishment of charitable purposes and qualify as a PRI. One example illustrates that the existence of a high potential rate of return on an investment does not, by itself, prevent the investment from qualifying as a PRI. Another example illustrates that a private foundation’s acceptance of an equity position in conjunction with making a loan does not necessarily prevent the investment from qualifying as a PRI. The last example demonstrates that a guarantee arrangement may qualify as a PRI. The proposed regulations address solely the impact of section 4944 on the facts described and do not address whether there is a qualifying distribution under section 4942.

However, the Treasury Department and the IRS conclude that, based on the facts described in the last example, there would be no qualifying distribution under section 4942 at the time the foundation enters into the guarantee arrangement. Under certain circumstances, a private foundation may treat payments made under a guarantee arrangement as qualifying distributions.
exempt activities. Accordingly, the purchase of the common stock of S is a program-related investment.

**Example 12.** Q, a developing country, produces a substantial amount of recyclable solid waste materials that are currently disposed of in landfills and by incineration, contributing significantly to environmental deterioration in Q. X is a new business enterprise located in Q. X’s only activity will be collecting recyclable solid waste materials in Q and delivering those materials to recycling centers located in a majority of the population. If successful, the recycling collection business would prevent pollution in Q caused by the usual disposition of solid waste materials. X has obtained funding from only a few commercial investors who are concerned about the environmental impact of solid waste disposal. Although X made substantial efforts to procure additional funding, X has not been able to obtain sufficient funding because the expected rate of return is significantly less than the acceptable rate of return on an investment of this type. Because X has been unable to attract additional investors on the same terms as the initial investors, Y, a private foundation, enters into an investment agreement with X to purchase shares of X’s common stock on the same terms as X’s initial investors. Although there is a high risk associated with the investment in X, there is also the potential for a high rate of return if X is successful in the recycling business in Q. Y’s primary purpose in making the investment is to combat environmental deterioration. No significant purpose of the purpose invests involves the production of income or the appreciation of property. The investment significantly further the accomplishment of Y’s exempt activities and would not have been made but for such relationship between the investment and Y’s exempt activities. Accordingly, the purchase of the common stock is a program-related investment.

**Example 13.** Assume the facts as stated in Example 12, except that X offers Y shares of X’s common stock in order to induce Y to make a below-market-rate loan to X. X previously made the same offer to a number of commercial investors. These investors were unwilling to provide loans to X on such terms because the expected return on the combined package of stock and debt was below the expected market return for such an investment based on the level of risk involved, and they were also unwilling to provide loans on other terms X considers economically feasible. Y accepts the stock and makes the loan on the same terms that X offered to the commercial investors. Y plans to liquidate its stock in X as soon as the recycling collection business in Q is profitable or it is established that the business will never become profitable. Y’s primary purpose in making the investment is to combat environmental deterioration. No significant purpose of the investment involves the production of income or the appreciation of property. The investment significantly further the accomplishment of Y’s exempt activities and would not have been made but for such relationship between the investment and Y’s exempt activities.
Example 19. Assume the same facts as stated in Example 18, except that instead of making a deposit of Sh into B, Y enters into a guarantee agreement with B. The guarantee agreement provides that if X defaults on the loan, Y will repay the balance due on the loan to B. B was unwilling to make the loan to X in the absence of Y’s guarantee. X must use the proceeds from the loan to construct the new child care facility. At the same time, X and Y enter into a reimbursement agreement whereby X agrees to reimburse Y for any and all amounts paid to B under the guarantee agreement. The signed guarantee and reimbursement agreements together constitute a “guarantee and reimbursement arrangement.” Y’s primary purpose in entering into the guarantee and reimbursement arrangement is to further Y’s educational purposes. No significant purpose of the guarantee and reimbursement arrangement involves the production of income or the appreciation of property. The guarantee and reimbursement arrangement significantly furthers the accomplishment of Y’s exempt activities and would not have been made but for such relationship between the guarantee and reimbursement arrangement and Y’s exempt activities. Accordingly, the guarantee and reimbursement arrangement is a program-related investment.

(c) Effective/applicability date.

Paragraph (b), Examples 11 through 19 of this section will be effective on the date of publication of the Treasury decision adopting these examples as final regulations in the Federal Register. Taxpayers may rely on paragraph (b), Examples 11 through 19 of this section before these proposed regulations are finalized.

Steven T. Miller,
Deputy Commissioner for Services and Enforcement.
[FR Doc. 2012–9401 Filed 4–18–12; 8:45 am]
BILLING CODE 4830–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73
[MB Docket No. 08–150; RM–11390; DA 12–512]
Radio Broadcasting Services; Asbury and Maquoketa, IA, and Mineral Point, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: The Audio Division dismisses the petition for rule making filed by KM Radio of Independence, LLC, proposing the allotment of Channel 238A at Mineral Point, Wisconsin, and the substitution of reserved Channel *254A for reserved vacant Channel *238A at Asbury, Iowa, 73 FR 50,297, and terminates the proceeding.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission’s Report and Order, MB Docket No. 08–150, adopted April 2, 2012, and released April 2, 2012. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission’s duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, (800) 378–3160, or via the company’s Web site, www.bcpiweb.com. The Report and Order is not subject to the Congressional Review Act, and therefore the Commission will not send a copy of it in a report to be sent to Congress and the Government Accountability Office, see U.S.C. 801(a)(1)(A).

Federal Communications Commission.
Nazifa Sawez,
Assistant Chief, Audio Division, Media Bureau.
[FR Doc. 2012–9401 Filed 4–18–12; 8:45 am]
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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17
RIN 1018–AY40

Endangered and Threatened Wildlife and Plants; Special Rule for the Polar Bear

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; availability of draft environmental assessment.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to amend the regulations at 50 CFR part 17, which implement the Endangered Species Act of 1973, as amended (ESA), to create a special rule under authority of section 4(d) of the ESA that provides measures that are necessary and advisable to provide for the conservation of the polar bear (Ursus maritimus). The Secretary has the discretion to prohibit by regulation with respect to the polar bear any act prohibited by section 9(a)(1) of the ESA.

DATES: We will consider comments we receive on or before June 18, 2012. We must receive requests for public hearings, in writing, at the address shown in the FOR FURTHER INFORMATION CONTACT section by June 4, 2012.

ADDRESSES:

Written comments: You may submit comments on the proposed rule and associated draft environmental assessment by one of the following methods:
• U.S. mail or hand-delivery: Public Comments Processing, Attn: Docket No. FWS–R7–ES–2012–0009; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203; or

Please indicate to which document, the proposed rule or the draft environmental assessment, your comments apply. We will post all comments on http://www.regulations.gov. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Charles Hamilton, Marine Mammals Management Office, U.S. Fish and Wildlife Service, Region 7, 1011 East Tudor Road, Anchorage, AK 99503; telephone 907–786–3309. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:
Executive Summary

Why We Need To Publish a Proposed Rule

In response to litigation against the Service challenging our December 16, 2008 final 4(d) special rule for the polar bear, the District Court for the District of Columbia (Court) found that although the final 4(d) special rule for the polar bear was consistent with the ESA, the Service violated the National Environmental Policy Act (NEPA) and the Administrative Procedure Act by failing to conduct a NEPA analysis when it promulgated the final 4(d)