

of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

**(q) Related Information**

Refer to MCAI Canadian Airworthiness Directive CF-2010-24, dated August 3, 2010; and the service bulletins specified in paragraphs (q)(1), (q)(2), (q)(3), (q)(4), (q)(5), (q)(6), (q)(7), (q)(8), and (q)(9) of this AD; for related information.

(1) Canadair Regional Jet Temporary Revision RJ/186-1, dated August 24, 2010, to the Canadair Regional Jet Airplane Flight Manual, CSP A-012.

(2) Bombardier Alert Service Bulletin A601R-29-029, Revision B, dated May 11, 2010, including Appendix A, dated October 18, 2007.

(3) Bombardier Alert Service Bulletin A601R-29-031, Revision A, dated March 26, 2009.

(4) Bombardier Alert Service Bulletin A601R-32-103, Revision D, dated May 11, 2010, including Appendix A, Revision A, dated October 18, 2007.

(5) Bombardier Service Bulletin 601R-29-032, Revision A, dated January 26, 2010.

(6) Bombardier Service Bulletin 601R-29-033, Revision A, dated May 11, 2010, including Appendix A, dated May 5, 2009.

(7) Bombardier Service Bulletin 601R-29-035, Revision A, dated December 8, 2010.

(8) Bombardier Service Bulletin 601R-32-106, Revision A, including Appendix A, dated May 11, 2010.

(9) Bombardier Service Bulletin 601R-32-107, Revision B, dated December 8, 2010.

Issued in Renton, Washington, on April 11, 2012.

**John P. Piccola,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

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**BILLING CODE 4910-13-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**15 CFR Part 922**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 1**

**Revisions of Boundaries, Regulations and Zoning Scheme for Florida Keys National Marine Sanctuary; Revisions of Fish and Wildlife Service and State of Florida Management Agreement for Submerged Lands Within Boundaries of the Key West and Great White Heron National Wildlife Refuges and Regulations; Intent To Prepare a Draft Environmental Assessment or Environmental Impact Statement; Notice of Scoping Meetings**

**AGENCY:** Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC) and National Wildlife Refuge System, Fish and Wildlife Service (FWS), U.S. Department of the Interior (DOI).

**ACTION:** Notice of Intent to Conduct Scoping Meetings for the Revision of Boundaries, Regulations and Zoning Scheme for Florida Keys National Marine Sanctuary and Key West and Great White Heron National Wildlife Refuges; and to Prepare an Environmental Assessment or Draft Environmental Impact Statement.

**SUMMARY:** In accordance with the National Marine Sanctuaries Act, as amended, (NMSA) and the National Wildlife Refuge System Administration Act of 1966 as amended by the National Wildlife Refuge System Improvement Act of 1997, the Office of National Marine Sanctuaries (ONMS) of the National Oceanic and Atmospheric Administration (NOAA) and the National Wildlife Refuge System of the Fish and Wildlife Service (FWS) have initiated a review of Florida Keys National Marine Sanctuary (FKNMS or sanctuary) boundaries, regulations and zoning scheme. This review of existing regulations and marine zoning may result in changes to regulations, marine zoning, such as altering boundaries of current zones, creating new zones, or amending the regulations that apply to individual zones, and possibly sanctuary boundaries. The review will also include the FWS's Backcountry Management Plan and associated

regulations, as authorized by the FWS and State of Florida Management Agreement for Submerged Lands within Boundaries of the Key West and Great White Heron National Wildlife Refuges, to evaluate substantive progress toward implementing the backcountry management goals for the refuges.

**DATES:** All comments on issues related to the boundaries, regulations and zoning scheme of Florida Keys National Marine Sanctuary and the agreement for submerged lands within boundaries of the Key West and Great White Heron National Wildlife Refuges and associated regulations will be considered if received on or before June 29, 2012. See **SUPPLEMENTARY INFORMATION** section below for the dates, times, and locations of the public scoping meetings.

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

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Submit electronic comments via the Federal eRulemaking Portal, FDMS Docket Number NOAA-NOS-2012-0061.

- *Mail:* Sean Morton, Sanctuary Superintendent, Florida Keys National Marine Sanctuary, 33 East Quay Road Key West, Florida 33040 and Anne Morkill, Refuge Manager, U.S. Fish and Wildlife Service, 28950 Watson Blvd., Big Pine Key, FL 33043.

- *Instructions:* All comments received are a part of the public record and will be generally posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NOAA will accept anonymous comments (enter N/A in the required fields to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:**

Sean Morton, Sanctuary Superintendent, FKNMS, Telephone: (305) 809-4700 x233 or Anne Morkill, Refuge Manager, USFWS, Telephone: (305) 872-2239 x209.

**SUPPLEMENTARY INFORMATION:** In accordance with the National Marine Sanctuaries Act, as amended, (NMSA) (16 U.S.C. 1431 *et seq.*) and the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd-668ee) as amended by the National Wildlife Refuge System Improvement Act of 1997, the Office of National Marine

Sanctuaries (ONMS) of the National Oceanic and Atmospheric Administration (NOAA) and the National Wildlife Refuge System of the Fish and Wildlife Service (FWS) have initiated a review of Florida Keys National Marine Sanctuary (FKNMS or sanctuary) boundaries, regulations and zoning scheme. Collectively, NOAA and FWS will make revisions to the sanctuary boundaries, regulations and zoning scheme and backcountry management agreement as necessary to fulfill the purposes and policies of the NMSA, the Florida Keys National Marine Sanctuary and Protection Act (FKNMSPA; Pub. L. 101-605), and the National Wildlife Refuge System Improvement Act of 1997 (NWRISA; Pub. L. 105-57). The review is being undertaken in response to several factors, including community interest in examining management and conservation strategies, the need to adapt sanctuary and refuge management to changing conditions such as emerging threats to resources, recent scientific findings showing degraded habitat and how resources may be improved with various long-term management efforts, and legal requirements. More information about this process can be found at <http://floridakeys.noaa.gov/review/welcome.html>.

### Florida Keys National Marine Sanctuary

The NMSA (16 U.S.C. 1431 *et seq.*) authorizes the Secretary of Commerce to designate and protect areas of the marine environment with special national significance due to their conservation, recreational, ecological, historical, scientific, cultural, archeological, educational, or esthetic qualities as national marine sanctuaries. Management of national marine sanctuaries has been delegated by the Secretary of Commerce to NOAA's Office of National Marine Sanctuaries (ONMS). Florida Keys National Marine Sanctuary (FKNMS) was designated by Congress in 1990 through the Florida Keys National Marine Sanctuary Protection Act (FKNMSPA, Pub. L. 101-605). FKNMS extends approximately 250 statute miles southwest from the southern tip of the Florida peninsula, and is composed of both state and Federal waters. The sanctuary's marine ecosystem supports over 6,000 species of plants, fishes, and invertebrates, including the Nation's only living coral reef that lies adjacent to the continent. The area includes one of the largest seagrass communities in this hemisphere. The primary goal of the sanctuary is to protect the marine resources of the Florida Keys. Other

goals of the sanctuary include facilitating human uses that are consistent with the primary objective of resource protection as well as educating the public about the Florida Keys marine environment.

The National Oceanic and Atmospheric Administration (NOAA), a federal agency within the Department of Commerce, administers FKNMS. With 60 percent of its protected area located in Florida state waters, the sanctuary is jointly managed by NOAA and the State of Florida under a co-trustee agreement. Under this agreement, NOAA's primary management partner is the Florida Department of Environmental Protection (DEP). Any amendments to the management plan will be submitted and reviewed pursuant to the State of Florida's clearinghouse process. Any amendments to sanctuary regulations require the approval of the Governor on behalf of and with the approval of the Florida Trustees (the Governor and Cabinet of the State of Florida act as the Board of Trustees of the Internal Improvement Trust Fund) in order to be effective in State waters and submerged lands, except for merely editorial amendments, technical corrections, and emergency regulations.

In FKNMS, NOAA regulates the following: Injuring coral; fishing; discharges and deposits; impacts to the seafloor, including from dredging and dumping; discharges of sewage from vessels; vessel operations, including personal watercraft and airboats, that cause injuries to resources, humans or property; anchoring on coral; wakes near residential shorelines; vessel operations near diving/use of dive flags; releasing exotic species; damage to markers, buoys and scientific equipment; injuring historical resources; use of explosives and electric charges; harvest of marine life species except as allowed by the Florida Fish and Wildlife Conservation Commission; and activities in specified zones. Information on sanctuary regulations can be found online at <http://floridakeys.noaa.gov/regs/welcome.html?s=management>.

The types of zones currently in place in the sanctuary are: ecological reserves, sanctuary preservation areas, wildlife management areas, existing management areas, and special-use areas. A more detailed description of sanctuary zones can be found online at <http://floridakeys.noaa.gov/zones/types.html>. In addition, the FKNMS revised management plan is available for download at <http://floridakeys.noaa.gov/mgmtplans/2007.html>.

### Key West and Great White Heron National Wildlife Refuges

In the Key West and Great White Heron National Wildlife Refuges, the Fish and Wildlife Service (FWS) may implement restrictions to minimize wildlife disturbance and habitat destruction in state waters from non-wildlife-dependent activities under a joint management agreement with the State of Florida for submerged lands. The FWS protects backcountry resources in state waters with limits on access/operation of vessels, jet skis, and air boats; buffer zones; water skiing; and aircraft water landings. The FWS backcountry management plan is available for download at <http://www.fws.gov/nationalkeydeer/backcountry.html>. Additional information about the management goals and objectives for the Key West and Great White Heron National Wildlife Refuges is described in the Lower Florida Keys National Wildlife Refuges Comprehensive Conservation Plan, available for download at <http://www.fws.gov/southeast/planning/CCP/LowerFLkeysFinalPg.html>.

NOAA and the FWS anticipate that completion of the revised boundaries, regulations, zoning scheme, backcountry management plan and concomitant documents will require approximately forty-eight months from the date of publication of this notice of intent. This joint review process will occur concurrently with a public process under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). This notice confirms that NOAA and FWS will coordinate their responsibilities under section 106 of the National Historic Preservation Act (NHPA, 16 U.S.C. 470) with the ongoing NEPA process, pursuant to 36 CFR 800.8(a). Therefore, the NEPA documents and public and stakeholder meetings associated with this process are also intended to meet the section 106 requirements.

### Sanctuary Advisory Council

Sanctuary advisory councils are community-based advisory groups established to provide advice and recommendations to the superintendents of the national marine sanctuaries. Councils also serve as liaisons between their constituents in the community and sanctuaries. Sanctuary advisory councils provide advice about sanctuary operations and projects, including education and outreach, research and science, regulations and enforcement, and management planning. They are particularly critical in helping a

sanctuary during reviews of regulatory actions such as this zoning review. Council members provide expertise on both the local community and sanctuary resources, strengthen connections with the community, and help build increased stewardship for sanctuary resources.

The advisory council for Florida Keys National Marine Sanctuary has recommended the following goals and objectives to the sanctuary superintendent for this review:

A. To improve the diversity of natural biological communities in the Florida Keys to protect, and, where appropriate restore and enhance natural habitats, populations and ecological processes overall and in each of these subregions Tortugas, Marquesas, Lower, Middle, and Upper Keys.

1. Reduce stresses from human activities by establishing areas that restrict access to sensitive wildlife populations and habitats.

2. Protect large, contiguous, diverse and interconnected habitats that provide natural spawning, nursery, and permanent residence areas for the replenishment and genetic protection of marine life and protect and preserve all habitats and species.

3. Improve/maintain the condition of the biologically structured habitats including:

- a. Coral Reef
  - i. Inshore Patch Reef
  - ii. Mid-Channel Patch Reef
  - iii. Offshore Patch Reef
  - iv. Reef Margin/Fore Reef
  - v. Deep Reef
- b. Seagrass Bed
- c. Hardbottom
- d. Coastal Mangrove

4. Increase abundance and condition of selected key species including corals, queen conch, long spined sea urchin, apex predatory fish, birds and sea turtles.

B. To facilitate to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas not prohibited pursuant to other authorities.

1. Minimize conflicts among uses compatible with the National Marine Sanctuary.

2. Prevent heavy concentrations of uses that degrade Sanctuary resources.

3. Provide undisturbed monitoring sites for research and control sites to help determine the effects of human activities.

4. Achieve a vibrant ecologically sustainable ecosystem and economy.

a. Apply the best available science and balanced, conservation based management.

The sanctuary advisory council has also recommended the following guiding principles to the sanctuary superintendent for this review:

1. The regulation/zoning review of Florida Keys National Marine Sanctuary should be conducted with the recognition that there are bordering and overlapping marine management regimes in place, and that these regimes must be considered when contemplating changes to the regulation/marine zoning structure for Florida Keys National Marine Sanctuary.

2. All areas of Florida Keys National Marine Sanctuary should be classified as part of a specific zone, therefore the current "unzoned" area should be classified as a recognized zone type such as "general use area" or "multiple use area".

3. Each habitat type should be represented in a non-extractive marine zone in each of the biogeographically distinct sub regions of Florida Keys National Marine Sanctuary to achieve replication. The subregions identified were the Tortugas, Marquesas, and Lower, Middle, and Upper Keys.

4. Information on resilient reef areas that can serve as refugia should be taken into account in zoning changes.

5. Temporal zoning should be considered as a tool for protecting spawning aggregations and nesting seasons.

6. The size of individual non-extractive zoned areas, the cumulative total area included in non-extractive zones, and their spatial relationship with one another matter greatly in achieving the resource protection purposes of Florida Keys National Marine Sanctuary.

Members of the public are encouraged to contact the current council members who represent their areas of interest, as one of the roles of the members is to serve as a liaison between the sanctuary and members of the community. Contact information for advisory council members can be found at: <http://floridakeys.noaa.gov/sac/members.html>.

#### Review Process

In accordance with Section 304(e) of the NMSA, 16 U.S.C. 1431 *et seq.*, the NOAA ONMS is initiating a review of the sanctuary boundaries, regulations and zoning scheme to evaluate the substantive progress made toward implementing the management plan and goals for the sanctuary. In accordance with Section 4 of National Wildlife Refuge System Administration Act of 1966 (NWRSA; 16 U.S.C. 668dd *et seq.*), the ONMS and the FWS are also jointly initiating a review of the FWS backcountry management plan for the

Key West and Great White Heron National Wildlife Refuges to evaluate the substantive progress made toward implementing the goals and objectives. ONMS and the FWS anticipate drafting revised boundaries, regulations, zoning scheme, backcountry management agreement and concomitant documents as a result of this review. The current management plan for FKNMS was completed by NOAA in 2007. Contained within it is the FKNMS marine zoning action plan. It describes the five types of zones in the sanctuary, goals and objectives for marine zoning, and implementation strategies and actions. This review implements the marine zoning and regulatory action plans and strategies of the current management plan. The current FWS backcountry management plan and associated agreement for the Key West and Great White Heron National Wildlife Refuges was signed in 1992; it may be reviewed and revised every 5 years, although no prior reviews have occurred since the original plan was completed and the associated management agreement with the State of Florida is due to expire in 2017. The FWS, FKNMS and the State of Florida are reviewing the backcountry management agreement for potential revision and renewal.

There are several reasons for undertaking this review:

- Community and sanctuary advisory council interest in reexamining sanctuary management and conservation strategies, expressed during and subsequent to management plan reviews;

- Periodic evaluation of regulations and sanctuary zones ensures they continue to function best for dynamic natural resources and evolving human uses;

- The Florida Keys National Marine Sanctuary Condition Report 2011 shows human actions continue to degrade the habitat and living resources of the sanctuary, but habitat and resources may be improved with long-term management efforts, regulatory compliance, and community involvement;

- Emerging threats to the resources were largely unanticipated when the regulations were first issued and need to be addressed; and

- Reviews of the sanctuary and refuge backcountry management plans are required by law.

The review process is composed of five primary stages:

(1) Information collection and characterization, including public scoping meetings;

(2) Recommendation of the advisory council of Florida Keys National Marine

Sanctuary on revised boundaries, a revised zoning scheme and associated regulations, with possible working groups and public workshops;

(3) Preparation and release of draft revised boundaries, zoning scheme, backcountry management agreement, environmental evaluation, and, if appropriate, regulations or amendments to current regulations;

(4) Public review and comment on the draft boundaries and zoning scheme, proposed regulatory amendments, and other documents mentioned above; and

(5) Preparation and release of final revised boundaries, zoning scheme, backcountry management agreement, environmental evaluation, and, if appropriate, regulations.

NOAA and the FWS anticipate that the completion of the boundaries, zoning scheme, backcountry management agreement and concomitant documents will require approximately forty-eight months.

At this time, NOAA and FWS are opening a public scoping period to:

1. Solicit public comments on the boundaries, regulations and zoning scheme of Florida Keys National Marine Sanctuary; and the submerged lands within the boundaries of the Key West and Great White Heron National Wildlife Refuges and associated regulations; and

2. Help determine the scope of issues to be addressed in the preparation of boundaries, a zoning scheme, a backcountry management agreement, and an environmental assessment or environmental impact statement (EIS), pursuant to the National Environmental Policy Act (NEPA).

To that end, NOAA and FWS will conduct a series of scoping meetings in the Florida Keys and south Florida to collect public comment. These scoping meetings will also help determine the scope of issues to be addressed in the preparation of an environmental assessment or EIS pursuant to the NEPA, 43 U.S.C. 4321 *et seq.* The public scoping meeting schedule is presented below.

#### Public Scoping Meetings

The public scoping meetings will be held on the following dates and at the following locations beginning at 4 p.m. unless otherwise noted:

##### 1. Marathon, Florida

Tuesday, June 19, 2012

Monroe County Government Center, Emergency Operations Center/Board of County Commissioners Meeting Room, 2798 Overseas Highway, Marathon, FL 33050.

##### 2. Key Largo, Florida

Wednesday, June 20, 2012

Key Largo Library, 101485 Overseas Hwy., Tradewinds Shopping Center, Key Largo, FL 33037.

##### 3. Key West, Florida

Thursday, June 21, 2012

Doubletree by Hilton Hotel Grand Key Resort—Key West Tortuga Ballroom, 3990 S. Roosevelt Blvd., Key West, FL 33040.

##### 4. Miami, Florida

Tuesday, June 26, 2012

Florida International University, Modesto A. Monique Campus Graham University Center, Room GC 243, 11200 SW. 8th St., Miami, FL 33199.

##### 5. Fort Myers, Florida

Wednesday, June 27, 2012

Joseph P. Alessandro Office Complex, Rooms 165 C and D, 2295 Victoria Ave., Fort Myers, FL 33901.

#### Consultation Under National Historic Preservation Act

This notice confirms that NOAA and the FWS will coordinate their responsibilities under section 106 of the National Historic Preservation Act (NHPA, 16 U.S.C. 470) with the ongoing NEPA process, pursuant to 36 CFR 800.8(a) including the use of NEPA documents and public and stakeholder meetings to also meet the section 106 requirements. The NHPA specifically applies to any agency undertaking that may affect historic properties. Pursuant to 36 CFR 800.16(1)(1), historic properties includes: “any prehistoric or historic district, site, building, structure or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. The term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria.”

In coordinating its responsibilities under the NHPA and NEPA, NOAA and the FWS intend to identify consulting parties; identify historic properties and assess the effects of the undertaking on such properties; initiate formal consultation with the State Historic Preservation Officer, the Advisory Council of Historic Preservation, and other consulting parties; involve the public in accordance with NOAA’s NEPA procedures, and develop in consultation with identified consulting

parties alternatives and proposed measures that might avoid, minimize or mitigate any adverse effects on historic properties and describe them in any environmental assessment or draft environmental impact statement.

#### Condition Report

In preparation for this review, NOAA has produced a Florida Keys National Marine Sanctuary Condition Report 2011. The Condition Report provides a summary of resources and their conditions; pressures on those resources; the current condition and trends of water, habitat, living resources; maritime archeological resources; human activities that affect those resources; and management responses to pressures that threaten the integrity of the marine environment. The report serves as a supporting document for the review process, to inform constituents of the current status of sanctuary resources.

An electronic copy of the Florida Keys National Marine Sanctuary Condition Report 2011 is available to the public on the Internet at: <http://sanctuaries.noaa.gov/science/condition/fknms/welcome.html>.

#### Scoping Comments

Scoping meetings provide an opportunity to make direct comments to, and share information with, NOAA and the FWS on the boundaries, zones, and regulations of the entire sanctuary, and the management of and regulations for resources associated with the submerged lands of the Key West and Great White Heron National Wildlife Refuges. We encourage the public to participate and welcome any comments on the scope, types, and significance of issues related to the sanctuary’s boundaries and zoning scheme, the FWS’s backcountry management plan, and associated regulations. In particular, we are interested in hearing about the public’s view on the potential management within specified zones in the sanctuary/submerged lands with the two refuges for the next ten to fifteen years.

**Authority:** This notice is published under the authority of the National Marine Sanctuaries Act, as amended (16 U.S.C. 1431 *et seq.*; 16 U.S.C. 470), the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd *et seq.*); and National Historic Preservation Act (16 U.S.C. 470).

Dated: April 6, 2012.

**Daniel J. Basta,**

*Director for the Office of National Marine Sanctuaries.*

Dated: April 3, 2012.

**Cynthia K. Dohner,**

*Regional Director, Fish and Wildlife Service.*

[FR Doc. 2012-9345 Filed 4-18-12; 8:45 am]

**BILLING CODE 3510-NK-P**

## 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, Oluwafunmilayo 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 § 53.4944-1(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, § 53.4944-3(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, § 53.4942(a)-2(c)(3)(ii)(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, § 53.4942(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 purpose 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