

(d) *Contingent liability interest-free loans*—(1) *Treatment as loans.* In the case of an interest-free loan, for which the repayment obligation is contingent upon the company taking some future action or achieving some goal in fulfillment of the loan's requirements, the Secretary normally will treat any balance on the loan outstanding during a year as an interest-free, short-term loan in accordance with paragraphs (a), (b), and (c)(1) of this section. However, if the event upon which repayment of the loan depends will occur at a point in time more than one year after the receipt of the contingent liability loan, the Secretary will use a long-term interest rate as the benchmark in accordance with paragraphs (a), (b), and (c)(2) of this section. In no event may the present value (in the year of receipt of the contingent liability loan) of the amounts calculated under this paragraph exceed the principal of the loan.

(2) *Treatment as grants.* If, at any point in time, the Secretary determines that the event upon which repayment depends is not a viable contingency, the Secretary will treat the outstanding balance of the loan as a grant received in the year in which this condition manifests itself.

#### § 351.506 Loan guarantees.

(a) *Benefit*—(1) *In general.* In the case of a loan guarantee, a benefit exists to the extent that the total amount a firm pays for the loan with the government-provided guarantee is less than the total amount the firm would pay for a comparable commercial loan that the firm could actually obtain on the market absent the government-provided guarantee, including any difference in guarantee fees. *See* section 771(5)(E)(iii) of the Act. The Secretary will select a comparable commercial loan in accordance with § 351.505(a).

(2) *Government acting as owner.* In situations where a government, acting as the owner of a firm, provides a loan guarantee to that firm, the guarantee does not confer a benefit if the respondent provides evidence demonstrating that it is normal commercial practice in the country in question for shareholders to provide guarantees to their firms under similar circumstances and on comparable terms.

(b) *Time of receipt of benefit.* In the case of a loan guarantee, the Secretary normally will consider a benefit as having been received in the year in which the firm otherwise would have had to make a payment on the comparable commercial loan.

(c) *Allocation of benefit to a particular time period.* In allocating the benefit from a government-provided loan guarantee to a particular time period, the Secretary will use the methods set forth in § 351.505(c) regarding loans.

#### § 351.507 Equity.

(a) *Benefit*—(1) *In general.* In the case of a government-provided equity infusion, a benefit exists to the extent that the investment decision is inconsistent with the usual investment practice of private investors, including the practice regarding the provision of risk capital, in the country in which the equity infusion is made. *See* section 771(5)(E)(i) of the Act.

(2) *Private investor prices available*—(i) *In general.* Except as provided in paragraph (a)(2)(iii) of this section, the Secretary will consider an equity infusion as being inconsistent with usual investment practice (*see* paragraph (a)(1) of this section) if the price paid by the government for newly issued shares is greater than the price paid by private investors for the same (or similar form of) newly issued shares.

(ii) *Timing of private investor prices.* In selecting a private investor price under paragraph (a)(2)(i) of this section, the Secretary will rely on sales of newly issued shares made reasonably concurrently with the newly issued shares purchased by the government.

(iii) *Significant private sector participation required.* The Secretary will not use private investor prices under paragraph (a)(2)(i) of this section if the Secretary concludes that private investor purchases of newly issued shares are not significant.

(iv) *Adjustments for “similar” form of equity.* Where the Secretary uses private investor prices for a form of shares that is similar to the newly issued shares purchased by the government (*see* paragraph (a)(2)(i) of this section), the Secretary, where appropriate, will adjust the prices to reflect the differences in the forms of shares.

(3) *Actual private investor prices unavailable*—(i) *In general.* If actual private investor prices are not available under paragraph (a)(2) of this section, the Secretary will determine whether the firm funded by the government-provided equity was equityworthy or unequityworthy at the time of the equity infusion (*see* paragraph (a)(4) of this section). If the Secretary determines that the firm was equityworthy, the Secretary will apply paragraph (a)(5) of this section to determine whether the equity infusion was inconsistent with the usual investment practice of private investors. A determination by the Secretary that the firm was unequityworthy will constitute a determination that the equity infusion was inconsistent with usual investment practice of private investors, and the Secretary will apply paragraph (a)(6) of this section to measure the benefit attributable to the equity infusion.

(4) *Equityworthiness*—(i) *In general.* The Secretary will consider a firm to have been equityworthy if the Secretary determines that, from the perspective of a reasonable private investor examining the firm at the time the government-provided equity infusion was made, the firm showed an ability to generate a reasonable rate of return within a reasonable period of time. The Secretary may, in appropriate circumstances, focus its equityworthiness analysis on a project rather than the company as a whole. In making the equityworthiness determination, the Secretary may examine the following factors, among others:

(A) Objective analyses of the future financial prospects of the recipient firm or the project as indicated by, *inter alia*, market studies, economic forecasts, and project or loan appraisals prepared prior to the government-provided equity infusion in question;

(B) Current and past indicators of the recipient firm's financial health calculated from the firm's statements and accounts, adjusted, if appropriate, to conform to generally accepted accounting principles;

(C) Rates of return on equity in the three years prior to the government equity infusion; and

(D) Equity investment in the firm by private investors.

(ii) *Significance of a pre-infusion objective analysis.* For purposes of making an equityworthiness determination, the Secretary will request and normally require from the respondents the information and analysis completed prior to the infusion, upon which the government based its decision to provide the equity infusion (*see*, paragraph (a)(4)(i)(A) of this section). Absent the existence or provision of an objective analysis, containing information typically examined by potential private investors considering an equity investment, the Secretary will normally determine that the equity infusion received provides a countervailable benefit within the meaning of paragraph (a)(1) of this section. The Secretary will not necessarily make such a determination if the absence of an objective analysis is consistent with the actions of reasonable private investors in the country in question.

(iii) *Significance of prior subsidies.* In determining whether a firm was equityworthy, the Secretary will ignore current and prior subsidies received by the firm.

(5) *Benefit where firm is equityworthy.* If the Secretary determines that the firm or project was equityworthy (*see* paragraph (a)(4) of this section), the Secretary will examine the terms and the nature of the equity purchased to determine whether the investment was otherwise inconsistent with the usual investment practice of private investors. If the Secretary determines that the investment was inconsistent with usual private investment practice, the Secretary will determine the amount of the benefit conferred on a case-by-case basis.

(6) *Benefit where firm is unequityworthy.* If the Secretary determines that the firm or project was unequityworthy (*see* paragraph (a)(4) of this section), a benefit to the firm exists in the amount of the equity infusion.

(7) *Allegations.* The Secretary will not investigate an equity infusion in a firm absent a specific allegation by the petitioner which is supported by information establishing a reasonable basis to

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believe or suspect that the firm received an equity infusion that provides a countervailable benefit within the meaning of paragraph (a)(1) of this section.

(b) *Time of receipt of benefit.* In the case of a government-provided equity infusion, the Secretary normally will consider the benefit to have been received on the date on which the firm received the equity infusion.

(c) *Allocation of benefit to a particular time period.* The benefit conferred by an equity infusion shall be allocated over the same time period as a non-recurring subsidy. See § 351.524(d).

### § 351.508 Debt forgiveness.

(a) *Benefit.* In the case of an assumption or forgiveness of a firm's debt obligation, a benefit exists equal to the amount of the principal and/or interest (including accrued, unpaid interest) that the government has assumed or forgiven. In situations where the entity assuming or forgiving the debt receives shares in a firm in return for eliminating or reducing the firm's debt obligation, the Secretary will determine the existence of a benefit under § 351.507 (equity infusions).

(b) *Time of receipt of benefit.* In the case of a debt or interest assumption or forgiveness, the Secretary normally will consider the benefit as having been received as of the date on which the debt or interest was assumed or forgiven.

(c) *Allocation of benefit to a particular time period—(1) In general.* The Secretary will treat the benefit determined under paragraph (a) of this section as a non-recurring subsidy, and will allocate the benefit to a particular year in accordance with § 351.524(d).

(2) *Exception.* Where an interest assumption is tied to a particular loan and where a firm can reasonably expect to receive the interest assumption at the time it applies for the loan, the Secretary will normally treat the interest assumption as a reduced-interest loan and allocate the benefit to a particular year in accordance with § 351.505(c) (loans).

### § 351.509 Direct taxes.

(a) *Benefit—(1) Exemption or remission of taxes.* In the case of a program that

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provides for a full or partial exemption or remission of a direct tax (*e.g.*, an income tax), or a reduction in the base used to calculate a direct tax, a benefit exists to the extent that the tax paid by a firm as a result of the program is less than the tax the firm would have paid in the absence of the program.

(2) *Deferral of taxes.* In the case of a program that provides for a deferral of direct taxes, a benefit exists to the extent that appropriate interest charges are not collected. Normally, a deferral of direct taxes will be treated as a government-provided loan in the amount of the tax deferred, according to the methodology described in § 351.505. The Secretary will use a short-term interest rate as the benchmark for tax deferrals of one year or less. The Secretary will use a long-term interest rate as the benchmark for tax deferrals of more than one year.

(b) *Time of receipt of benefit—(1) Exemption or remission of taxes.* In the case of a full or partial exemption or remission of a direct tax, the Secretary normally will consider the benefit as having been received on the date on which the recipient firm would otherwise have had to pay the taxes associated with the exemption or remission. Normally, this date will be the date on which the firm filed its tax return.

(2) *Deferral of taxes.* In the case of a tax deferral of one year or less, the Secretary normally will consider the benefit as having been received on the date on which the deferred tax becomes due. In the case of a multi-year deferral, the Secretary normally will consider the benefit as having been received on the anniversary date(s) of the deferral.

(c) *Allocation of benefit to a particular time period.* The Secretary normally will allocate (expense) the benefit of a full or partial exemption, remission, or deferral of a direct tax to the year in which the benefit is considered to have been received under paragraph (b) of this section.

### § 351.510 Indirect taxes and import charges (other than export programs).

(a) *Benefit—(1) Exemption or remission of taxes.* In the case of a program, other than an export program, that provides