

§ 73a.735-1004

(6) Date of Commissioner's approval:

(7) Basis for exception: Employee owns financial interest in the ABC Foods Corporation, and permanent retention is normally prohibited under FDA/HHS conflict of interest regulations for such an employee. The employee, however, acquired this financial interest prior to his reassignment to FDA on _____, which was part of a major Department reorganization transferring certain functions from NIH to the FDA (i.e., FDA's Bureau of Biologics). At the time of acquisition and immediately prior to the reorganization, the employee's financial interest was allowable under Department regulations. The employee's official duties are fully confined to the matters under the jurisdiction of the Bureau of Biologics, and his official duties do not involve any contact with the food industry. The Commissioner has determined that an exception is warranted under the following criteria:

(i) Acquisition occurred prior to Department reorganization;

(ii) Financial interest retention will not give rise to an actual conflict of interest situation;

(iii) There is no direct relationship between the employee's official duties and the regulated activities of ABC Foods;

(iv) The employee occupies a position below that of Bureau or Deputy Bureau Director (or equivalent position in the Office of the Commissioner); and

(v) The employee agrees to refrain from engaging in any direct or indirect transactions that are designed to increase the value/shares of the "excepted" ABC Foods interests.

This exception is considered equitable to the employee involved, and retention of the ABC Foods interest will not in any way impair the interests of the Government or of the public.

(c) In interpreting the requirement of § 73a.735-502(a)(2)(v), events not involving employee discretion (e.g., accepting dividends in the form of cash or additional shares) do not constitute transactions designed to increase the value/shares of an "excepted" financial interest. A transaction involving discretion, e.g., exercise of stock options, may be

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made only if proposed to the Associate Commissioner for Administration and approved by the Conflict of Interest Review Board as an amendment to the original exception. A memorandum recording such approval shall be made public in accordance with paragraph (b) of this section.

(d) An employee may temporarily retain a prohibited financial interest pending review of a written request for an exception submitted in accordance with this section.

(e) Except as provided in § 73a.735-501(c), no employee may participate in an official matter whose outcome will have a direct and predictable effect on a financial interest held by him. This prohibition applies to official matters handled before and after approval of an exception under this section.

Subparts F-I [Reserved]

Subpart J—Statements of Employment and Financial Interests

§ 73a.735-1004 Submission and review of statements.

(a) Employees occupying control activity positions shall file Form HHS-473 "Confidential Statement of Employment and Financial Interests" with the Associate Commissioner for Administration within 30 days after entrance in this category and annually thereafter as of June 30, or such other dates as the Secretary, with the concurrence of the Civil Service Commission, may approve. Prior to the due date, the Associate Commissioner for Administration shall advise "control activity" employees of the annual filing requirement through normal administrative channels. The annual reporting requirement shall commence as of June 30, 1977.

(b) The Associate Commissioner for Administration (or his designee) shall serve as the principal reviewing official for Outside Activity Forms, HHS-520 and 521, and shall make final determinations on matters arising from activities reported on Form HHS-473.