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To: USOGE
Subject: Proposed Amendments to Part 2635

Attached please find the Foreign Agricultural Service's (FAS) comments to the proposed amendments to Part 2635 of the Standards of Ethical Conduct for Employees of the Executive Branch.

Thank you.

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**Foreign Agricultural Service (USDA)
Comment to Proposed OGE Amendments to 5 CFR Part 2635.
RIN 3209-AA04**

The U.S. Department of Agriculture's Foreign Agricultural Service (FAS) is providing comments to the Notice of Proposed Rulemaking (NPRM) issued by the Office of Government Ethics (OGE) regarding extending the gift ban on gifts from Federally registered lobbyists and lobbying organizations to all career Executive Branch employees. FAS applauds OGE's efforts to enhance Federal ethics requirements and respectfully urges that OGE revise the proposed regulation to maintain the gift exception in the Standards of Ethical Conduct for employees performing official duties overseas, which allows them to accept food refreshments or entertainment in the course of a breakfast, luncheon, dinner, or other meeting.

The Foreign Agricultural Service is a Federal agency that serves as an important link between U.S. agriculture and the world to enhance export opportunities for American agricultural producers and to enhance global food security. In addition to its Washington, D.C. headquarters, FAS has a global network of 98 offices in 75 countries with responsibility for 156 countries. The staff at these offices act as the eyes, ears, and voice for U.S. agriculture around the world. FAS staff identify problems, provide practical solutions, and work to advance opportunities for U.S. agriculture and to support U.S. foreign policy around the globe. FAS expands and maintains access to foreign markets for U.S. agricultural products by removing trade barriers and enforcing U.S. rights under existing trade agreements. FAS partners with approximately 75 cooperator groups representing a cross-section of the U.S. food and agricultural industry and manages a toolkit of market development programs to help U.S. exporters develop and maintain overseas markets for hundreds of American products.

Given that the role of FAS overseas is to advance the interests of US exporters and to promote the sale of US agricultural products to international markets, FAS personnel overseas often work in tandem with American companies in their engagement with foreign partners, counterparts, and governments. These engagements frequently occur at meals, receptions, or sponsored events. Because most large U.S. companies would be registered lobbying organizations, the proposed lobbyist gift ban, as currently drafted, would effectively end the current gift exception for meals, refreshments, and entertainment in foreign areas. The unintended consequences of this could have a "chilling effect" on the ability of FAS overseas personnel to work cooperatively with U.S. exporters to promote opportunities in international trade for American products.

From an international economic perspective, it is vitally important that FAS overseas personnel be permitted to accept invitations to such as meals, receptions, or sponsored events even when offered by an American producer that is also a registered lobbying organization, which would currently be approved under the Standards of Conduct. FAS fears that the U.S. Government could put itself, and American producers, at a distinct competitive disadvantage by not participating in business events designed to promote the interests of domestic industries in the competitive global marketplace. One foreseeable and unfortunate result of the current proposal, if left as drafted, could lead to a decrease in FAS engagement with US agricultural producers, and in turn a diminished opportunity for American agricultural products to compete favorably

due to a diminution in FAS's ability to engage with foreign corporations on behalf of those American producers.

Furthermore, FAS overseas personnel often attend events to support others not bound by the proposed lobbyist gift ban, such as Congressional delegations, industry delegations, and State Governors. This proposed rule, as currently drafted, would endanger FAS participation at such events. In the absence of the overseas meal exception, FAS employees would not be able to support these visitors at these events with their subject matter expertise or serve as interpreters at an event held on their behalf. As one recent example, the FAS agricultural attaché in Germany accompanied the U.S. Ambassador to a dinner featuring an American agricultural company. The FAS attaché was present to be available to advise the Ambassador at pull-aside meetings, as needed. Separately, the FAS attaché attended meetings on German government policies that impacted American agriculture.

Paying for an employee's meal at such a dinner or reception is not an option for an employee stationed overseas. Representation funds may not be used to pay for an employee's meal unless he is hosting a non-U.S. Government person. Adding to the problem is that the sponsor is not set up to collect money from guests who wish to pay for their own meals – meaning that if the overseas meals exception no longer applied, the FAS employee could no longer attend the event and provide on-the-spot support to senior-level US officials.

Finally, FAS is concerned that the proposed rule will require it to treat U.S. exporters differently due to the fact that not all agricultural trade associations are non-profit organizations. As an illustration, The Distilled Spirits Council, a national trade association representing America's leading distillers, is a registered lobbying organization. Under the proposed rule, as currently drafted, FAS overseas personnel could not participate in events that the Distilled Spirits Council sponsors. However, the American Soybean Association is a not-for-profit organization; so FAS employees could participate in events which that organization sponsors.

It is important to note that the current exception already has sufficient safeguards in place to prevent unfair access by lobbyists. The limited exception operates only when certain enumerated criteria are met. Thus, there is no question regarding the propriety of participation by FAS overseas personnel in these sponsored events, whether sponsored by lobbying organizations or not. Specifically, under the current system, ethics officials ensure compliance that free attendance is approved when:

- (1) After conversion to U.S. dollars, the market value does not exceed the per diem rate for the foreign area;
- (2) There is participation in the meeting or event by non-U.S. citizens or by representatives of foreign governments or foreign entities;
- (3) Attendance is part of the employee's official duties to obtain information, disseminate information, promote the export of goods and services, represent the U.S. or otherwise

further programs or operations of the agency or the U.S. mission in the foreign area; and
(4) The gift is from someone other than a foreign government.

5 C.F.R. Section 2635.204(i).

Therefore, in light of the reasons stated above, FAS respectfully requests that OGE revise its amendment of Part 2635 to retain the overseas meal exception to allow Executive Branch employees to accept complimentary meals and attendance at events to promote and advance the export and sale of American products overseas.