



November 11, 2011

Mr. Richard M. Thomas
Associate General Counsel
Office of Government Ethics
1201 New York Avenue, NW., Suite 500
Washington, DC 20005-3917

VIA ELETRONIC MAIL
USOGE@OGE.GOV

Re: Proposed Amendments to Part 2635 (RIN 3209-AA04)

Dear Mr. Thomas:

The American Feed Industry Association (AFIA) is the world's largest organization devoted exclusively to representing the business, legislative and regulatory interests of the United States animal feed industry and its suppliers. Founded in 1909, AFIA also is the recognized leader on international industry developments. AFIA represents the total feed industry, and its members include more than 520 domestic and international companies and state, regional and national associations. Member companies are livestock feed and pet food manufacturers, integrators, pharmaceutical companies, ingredient suppliers, equipment manufacturers and companies which supply other products, services and supplies to feed manufacturers.

AFIA submits these comments on the proposed rule of the Office of Government Ethics (OGE) to amend specific regulations governing standards of ethical conduct for Executive Branch employees of the federal government, 5 C.F.R. §§ 2635.202-2635.203, by imposing additional limits on the use of gift exceptions. *See generally* Standards of Ethical Conduct for Employees of the Executive Branch; Proposed Amendments Limiting Gifts from Registered Lobbyists and Lobbying Organizations, 76 Fed. Reg. 56,330 (Sept. 13, 2011).

As a section 501(c)(6) trade association, AFIA is in the business of both communicating to its members about the programs and regulations of government agencies which affect their feed related businesses, and communicating to government agencies about the products which its members produce and distribute and about the processes which are used in producing those products. In carrying out these functions, AFIA conducts educational programs and meetings to inform its members regarding good manufacturing practices, industry innovations and the scope of relevant laws, regulations and proposed regulations. It is AFIA's general practice that these educational programs have been, and should be, open and available to the employees of government regulatory agencies, who need to be informed about the manufacturing practices and industry innovations which they regulate, and who need to hear how AFIA and its members interpret relevant laws and regulations, so as to provide these agencies with an opportunity to

provide appropriate guidance in the event that AFIA or its members are perceived to be misinterpreting these important requirements.

In addition to communicating with its members about business practices and relevant laws and regulations, AFIA communicates with relevant Executive Branch agencies and Congressional committees regarding the impact of existing and proposed laws and regulations on its members. These communications, on behalf of AFIA members to government officials, are constitutionally protected by the First Amendment's guarantees of freedom of speech and the right to petition the government for redress of grievances. In connection with its communications to members of Congress and Congressional committees, AFIA employs a registered lobbyist. Under the proposed regulations, because AFIA employs a registered lobbyist, it would be restricted in its ability to continue its practices of openly communicating with relevant Executive Branch agencies about feed industry manufacturing practices, industry innovations and the impact and interpretation of relevant laws and regulations.

The attendance of government employees at AFIA meetings is an important two-way street. AFIA members need to hear from the federal officials who regulate them, and this is particularly important for the smaller AFIA members, who cannot afford their own individual representation in Washington, DC. It is also important that these government employees have the opportunity to listen to the perceptions and concerns of AFIA members in order to better understand the industry which they regulate. Again, this is particularly important for smaller AFIA members, who do not have the financial or organizational capability to make individual visits to federal agency officials.

While AFIA supports OGE's goal of optimizing ethical standards for Executive Branch employees, the proposed rule, expressly and/or by practical implication, in effect, would detrimentally and unwarrantedly impact the best interests of AFIA and Executive Branch employees and, therefore, we urge its revision.

In particular, OGE has proposed to revise § 2635.203 by adding new paragraph (h), which provides, in pertinent part:

(h) *Registered lobbyist or lobbying organization* means a person (including an organization) currently registered pursuant to 2 U.S.C. 1603 (Lobbying Disclosure Act) or listed as a lobbyist in such registration, as found in the databases maintained by the Secretary of the Senate and the Clerk of the House of Representatives, but it does not include:

(1) An organization exempt from taxation pursuant to 26 U.S.C. 501(c)(3);

* * *

(4) A nonprofit professional association, scientific organization or learned society, with respect to any gift made in connection with the entity's educational or professional development activities.

76 Fed. Reg. at 56,339 col. 1 (emphasis added). Pursuant to the (h)(4) provision, the educational or professional development activities of nonprofit professional associations, scientific organizations, and learned societies would be excluded from the prohibitions on accepting gifts from a registered lobbyist or lobbying organization imposed by proposed § 2635.202(c)(6)-(d) (76 Fed. Reg. at 56,338-56,339). However, with respect to trade associations, the preamble to the proposed rule provides:

Although the exclusion is intended to cover a wide range of organizations devoted to various professions and disciplines, OGE does not intend that proposed section 2635.203(h)(4) would cover trade associations, such as associations of manufacturers of particular products. Trade associations may sponsor educational activities for their members and even the public, but the primary concern of such associations generally is not the education and development of members of a profession or discipline, which is the focus of the proposed exclusion.

76 Fed. Reg. at 56,338 col. 1. The preamble also specifies the prohibitions on accepting gifts from a registered lobbyist or lobbying organization that would be imposed on Executive Branch employees by the proposed rule:

[T]he proposed rule would not permit any employee to use the following exceptions in connection with gifts from registered lobbyists or lobbying organizations: Section 2635.204(a), the \$20 de minimis exception; section 2635.204(g)(2), the widely attended gathering exception (WAG); section 2635.204(h), the social invitation exception; and section 2635.204(i), the exception for meals, refreshments and entertainment from private entities in a foreign area. The de minimis and WAG provisions, in particular, are among the most widely used exceptions in the OGE gift regulations, so the change effected by the proposed new limitation is not inconsiderable.

76 Fed. Reg. at 56,332 col. 2 (emphasis added).

OGE expressly bases not including trade associations in the (h)(4) exclusion on comparative definitions of “trade association” and “professional association”:

Compare Encyclopedia Britannica (2008) (“trade association” is “voluntary association of business firms organized on a geographic or industrial basis to promote and develop commercial and industrial opportunities within its sphere of operation, to voice publicly the views of members on matters of common interest, or in some cases to exercise some measure of control over prices, output, and channels of distribution”); [*with*] *Collins English Dictionary* (2009) (“professional association” is “body of persons

engaged in the same profession, formed usually to control entry into the profession, maintain standards, and represent the profession in discussions with other bodies”).

76 Fed. Reg. at 56,338 footnote 4. However, this comparison naturally is factually limited and, consequently, analytically misleading. AFIA (and other trade associations), like nonprofit professional associations, scientific organizations, and learned societies, hosts WAG educational and professional development activities that presently often are eagerly attended by Executive Branch employees (e.g., U.S. Department of Agriculture and Food and Drug Administration officials). Our seminars, conferences, trade shows and other programs certainly are “substantive events that would provide a legitimate educational or professional development benefit that furthers the interests of an agency” (76 Fed. Reg. at 56, 333 col. 2) because they provide a mutual opportunity for learning and exchange of ideas to both government and industry attendees. This being the case, even if our “primary concern” were “not the education and development of members of a profession or discipline” (which is debatable), AFIA’s activities should be within the (h)(4) exclusion when educational or professional development is their focus.

Moreover, AFIA (and many other trade associations) is a section 501(c)(6) organization, rather than a 501(c)(3) organization, ineligible for the exclusion proposed in § 2635.203(h)(1) (76 Fed. Reg. at 56,339 col. 1).

For these foregoing reasons, AFIA requests that the proposed (h)(4) exclusion be revised in finalizing the rule to include trade associations. This could be accomplished, for example, by amending the provision to read:

(4) A nonprofit professional association, trade association, scientific organization or learned society, with respect to any gift made in connection with the entity’s educational or professional development activities. [Emphasis added.]

or

(4) A nonprofit professional or trade association, scientific organization or learned society, with respect to any gift made in connection with the entity’s educational or professional development activities. [Emphasis added.]

Such a revision would remove all uncertainty about the continuing eligibility of Executive Branch employees to attend and participate in WAG educational and professional development activities hosted by AFIA (and other trade associations).

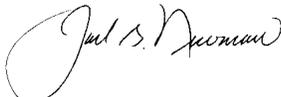
In addition to this revision of § 2635.203(h)(4), AFIA requests that OGE remove other uncertainty by clarifying the following matters in the preamble of its final rule:

- An Executive Branch employee speaking at one session of a multiple day WAG educational or professional development event is subject to the gift exception for each day of the event. *See generally* 5 C.F.R. § 2635.204(g).
 - A government speaker's comments reasonably might address comments made by another speaker(s) on a prior day, or a government speaker could address or question (from the floor or otherwise) comments made by another speaker(s) on a prior or subsequent day. The government speaker's opportunity to learn and to exchange ideas in furtherance of the interests of an administrative agency ought not be unreasonably limited to the day of the speaking engagement.
- The gift exception for an Executive Branch employee speaking at a WAG educational or professional development event applies regardless of whether her/his remarks are delivered from a podium, panel stage, roundtable discussion or other speaker station. *See generally* 5 C.F.R. § 2635.204(g)(1).

The proposed regulations would restrict AFIA's ability to act as an effective communications intermediary between its members and the employees of Executive Branch agencies. These communications benefit both the government and AFIA members. In order to minimize these restrictions, the proposal should be amended as suggested above.

Finally, AFIA supports the comments submitted on this rulemaking by the American Society of Association Executives.

Sincerely,



Joel G. Newman
President, CEO and Treasurer