

Office of Government Ethics

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Letter to a Designated Agency Ethics Official dated April 10, 1996

This is in reply to your letter dated March 25, 1996, in which you requested our opinion as to whether the Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Conduct), 5 C.F.R. part 2635, superseded all prior agency standards of conduct regulations and policies, including those related to purely personnel management matters. Your request was prompted by a labor-management dispute at your agency, in which the union is alleging that all of your agency's regulations and policy guidance concerning workplace conduct became null and void as of the effective date of the Standards of Conduct (February 3, 1993). There seems to be some misunderstanding by the union on this point.

Section 201(a) of Executive Order 12674 directed the Office of Government Ethics (OGE) to promulgate regulations "that establish a single, comprehensive, and clear set of executive-branch standards of conduct that shall be objective, reasonable, and enforceable." Under a savings provision in section 502(a) of the Executive order, individual agency standards of conduct regulations that had been issued under Executive Order 11222 (which was revoked by Executive Order 12674) remained in effect until the effective date of the uniform regulations being promulgated by the Office of Government Ethics. However, as explained in the preamble to the publication of 5 C.F.R. part 2635 as a final rule, at 57 Fed. Reg. 35010 (Aug. 7, 1992):

By addition over time, a variety of provisions not based specifically on the standards of ethical conduct have been included in agency standards of conduct regulations. Insofar as Executive Order 12674 provides for individual agency regulations, it contemplates that those regulations will supplement part 2635 only to the extent necessary to apply the principles and standards in part 2635 to an agency's particular functions and activities. Provisions in current agency regulations that do not relate specifically to the principles and standards in part 2635 may be reissued by the agency, but not as part of its supplemental agency regulations issued under [5 C.F.R.] § 2635.105.

Thus, it is clear that the Standards of Conduct in 5 C.F.R. part 2635 did not supersede all of an agency's regulations and policy guidance

concerning workplace conduct. Agency conduct rules that do not relate specifically to the ethical principles and standards in part 2635 may remain in effect. 1

The specific rule in dispute at your agency is a dress code policy in the agency's Guide on Employee Conduct which provides:

An employee shall observe standard of dress and appearance acceptable in the community and suitable to the work environment. When an employee's dress causes disruption of work, or creates a safety hazard, the supervisor should consult with higher supervisors and the servicing Personnel Office to determine action to be taken.

This policy is a good example of a provision that does not relate specifically to the Standards of Conduct and which therefore was not superseded.

We trust that we have provided the needed clarification of the issue about which you sought our advice. Please let us know if we may be of any additional assistance.

Sincerely,

Stephen D. Potts
Director

1 Moreover, section 2635.105(c)(3) of the Standards of Conduct states that the requirements in 5 C.F.R. part 2635 for issuance of agency supplemental standards of ethical conduct regulations do not apply to "regulations or instructions that an agency has authority, independent of this part, to issue." Thus, for example, even though section 2635.101(b)(13) sets forth the general principle that "Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or handicap," all regulations implementing equal employment opportunity laws do not have to be included in supplemental agency regulations. Nor would an agency be required to publish all property-related regulations in its supplemental regulations, even though 5 C.F.R. § 2635.705 contains standards that refer to regulations dealing with use of Government

property.