



Decision

Matter of: U.S. Department of State, Bureau of Educational and Cultural Affairs—
Applicability of Congressional Review Act to Guidance Directive
2024-04

File: B-337392

Date: August 12, 2025

DIGEST

The U.S. Department of State, Bureau of Educational and Cultural Affairs issued *Guidance Directive – 2024-04: § 62.32 Summer Work Travel: Wage Requirements and Licenses* (Guidance Directive). The Guidance Directive provides clarifications to sponsors on the purpose of the Summer Work Travel category of the Exchange Visitor Program and is intended to assist sponsors in complying with program regulations.

The Congressional Review Act (CRA) requires that before a rule can take effect, an agency must submit the rule to both the House of Representatives and the Senate, as well as the Comptroller General. CRA adopts the definition of rule under the Administrative Procedure Act (APA) but excludes certain categories of rules from coverage. We conclude that the Guidance Directive is not a rule for purposes of CRA because it does not meet the APA definition of rule.

DECISION

On December 3, 2024, the U.S. Department of State (State), Bureau of Educational and Cultural Affairs (ECA) issued *Guidance Directive – 2024-04: § 62.32 Summer Work Travel: Wage Requirements and Licenses* (Guidance Directive).¹ We received a request for a decision as to whether the Guidance Directive is a rule for purposes

¹ State, *Guidance Directive – 2024-04: § 62.32 Summer Work Travel: Wage Requirements and License* (Dec. 3, 2024), available at <https://j1visa.state.gov/wp-content/uploads/2025/05/2024-04-Guidance-Directive-Wage-Requirements-and-Licenses.pdf> (last visited July 7, 2025).

of the Congressional Review Act (CRA).² As discussed below, we conclude the Guidance Directive is not a rule for purposes of CRA.

Our practice when issuing decisions is to obtain the legal views of the relevant agency on the subject of the request.³ Accordingly, we reached out to State to obtain the agency's legal views.⁴ We received a response from State on May 20, 2025.⁵ State also provided supplemental information in response to follow-up requests from our office in May and June 2025.⁶

BACKGROUND

Exchange Visitor Program – Summer Work Travel

The Exchange Visitor Program (EVP) is an international exchange program administered by ECA to implement the Mutual Educational and Cultural Exchange Act of 1961, as amended.⁷ EVP aims to provide foreign nationals with opportunities to participate in educational and cultural programs in the United States and return home to share their experiences.⁸ A subset of EVP, the Summer Work Travel (SWT) program, permits foreign college and university students enrolled full time at post-secondary accredited institutions outside the United States, to come to the United States to share their culture and ideas with people of the United States.⁹ To

² Letter from Senator Marsha Blackburn to Comptroller General (Mar. 26, 2025).

³ GAO, *GAO's Protocols for Legal Decisions and Opinions*, GAO-24-107329 (Washington, D.C.: Feb. 21, 2024), available at <https://www.gao.gov/products/gao-24-107329>.

⁴ Letter from Assistant General Counsel, GAO, to Senior Bureau Official, State (May 5, 2025).

⁵ Letter from Senior Bureau Official, State, to Assistant General Counsel, GAO (May 20, 2025) (Response Letter).

⁶ Email from Special Assistant, State, to Senior Attorney, GAO, *Subject: RE: [External] FW: GAO development letter* (May 31, 2025) (May Response); Email from Special Assistant, State, to Senior Attorney, GAO, *Subject: RE: [External] FW: GAO development letter* (June 22, 2025) (June Response).

⁷ Pub. L. No. 87-256, 75 Stat. 527 (Sept. 21, 1961), 22 U.S.C. § 2451.

⁸ 22 C.F.R. § 62.1(b); accord 22 U.S.C. § 2451.

⁹ 22 C.F.R. § 62.32(b).

defray a portion of their expenses, SWT participants are permitted to work in positions that require minimal training and are seasonal or temporary in nature.¹⁰

To facilitate SWT, State designates public and private sector entities to act as sponsors for SWT participants.¹¹ Sponsors are responsible for screening and selecting eligible foreign nationals to participate in the program as well as supporting and monitoring those participants during their stay in the United States.¹² Among other responsibilities, sponsors must vet potential employers for SWT participants and ensure that both the position and its compensation comply with State regulations.¹³

Guidance Directive 2024-04

On December 3, 2024, ECA issued the Guidance Directive to “provide further clarification to sponsors on the purpose” of the EVP SWT category and to assist sponsors in complying with relevant regulations by “providing clarification regarding wages and license requirements.”¹⁴ The Guidance Directive quotes directly from pertinent EVP regulations on the purpose of the SWT program and paraphrases wage requirements and licensing prohibitions also contained in EVP regulations.¹⁵

Specifically, the Guidance Directive reminds sponsors of wage requirements for SWT participants, noting that sponsors must ensure that SWT participants are paid the higher of the applicable federal, state, or local minimum wage (including overtime); or pay commensurate with their U.S. counterparts.¹⁶ It also reminds sponsors that they are required to furnish SWT participant’s wage statements upon request by State.¹⁷

Additionally, the Guidance Directive notes that per EVP regulations, sponsors may not place SWT participants in positions that require licenses.¹⁸ This prohibition

¹⁰ 22 C.F.R. § 62.32(b).

¹¹ 22 C.F.R. § 62.1(b).

¹² 22 C.F.R. §§ 62.10(a), 62.32.

¹³ 22 C.F.R. §§ 62.32(g)–(i).

¹⁴ Guidance Directive, at 1.

¹⁵ See Guidance Directive.

¹⁶ Guidance Directive, at 1; *see also* 22 C.F.R. 62.32(i)(1).

¹⁷ Guidance Directive, at 1.

¹⁸ Guidance Directive, at 2.

precludes SWT participants' placement in a position that requires the permission of qualified authorities in the form of a license or similar permission to do an activity within a locale or municipality that would otherwise be prohibited without the license or permissions.¹⁹ However, the Guidance Directive clarifies that this prohibition does not preclude placement in positions that require certifications documenting an SWT participant's accomplishments or skills in particular areas, such as first aid, cardiopulmonary resuscitation, server or beverage serving, and lifeguard training, which may be prerequisites for specific positions offered by an employer.²⁰

Congressional Review Act

CRA, enacted in 1996 to strengthen congressional oversight of agency rulemaking, requires federal agencies to submit a report on each new rule to both houses of Congress and to the Comptroller General for review before a rule can take effect.²¹ The report must contain a copy of the rule, "a concise general statement relating to the rule," and the rule's proposed effective date.²² CRA allows Congress to review and disapprove rules issued by federal agencies for a period of 60 days using special procedures.²³ If a resolution of disapproval is enacted, then the new rule has no force or effect.²⁴

CRA adopts the definition of a rule under the Administrative Procedure Act (APA), which states that a rule is "the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency."²⁵ However, CRA excludes three categories of rules from coverage: (1) rules of particular applicability, including a rule that approves or prescribes for the future rates or wages; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties.²⁶

¹⁹ Guidance Directive, at 2; see also 22 C.F.R. § 62.32(g)(5)(i).

²⁰ Guidance Directive, at 2.

²¹ 5 U.S.C. § 801(a)(1)(A).

²² *Id.*

²³ 5 U.S.C. § 802.

²⁴ 5 U.S.C. § 801(b)(1).

²⁵ 5 U.S.C. §§ 551(4), 804(3).

²⁶ 5 U.S.C. § 804(3).

State did not submit a CRA report to Congress or the Comptroller General on the Guidance Directive.²⁷ In its response to us, State proffered that the Guidance Directive is not a rule because it merely restates existing regulations and agency policy and reminds private sector sponsors of their obligations to comply with program requirements.²⁸ State also provided documentation to demonstrate its enduring interpretations and practices pertaining to EVP regulations.²⁹

DISCUSSION

To determine whether the Guidance Directive is a rule subject to review under CRA, we first address whether it meets the definition of rule under the APA. We conclude that it does not. Because the Guidance Directive does not meet the APA definition of rule, we need not address whether any CRA exceptions apply.

Applying APA's definition of rule, the Guidance Directive meets some but not all of the required elements. First, the Guidance Directive is an agency statement as it is an official State document published on the agency's website.³⁰ Second, the Guidance Directive is of future effect because it provides guidance intended to assist sponsors of the SWT program on a prospective basis.³¹ However, the Guidance Directive does not meet the third element of APA's definition of rule because it does not implement, interpret, or prescribe law or policy, nor does it describe the organization, procedure, or practice requirements of an agency.

An agency action implements, interprets, or prescribes law or policy when it issues new regulations, changes regulatory requirements or official policy, or when it alters how the agency will exercise its discretion, among other things.³² In contrast, "a statement by an agency that simply restates an established interpretation 'tread[s] no new ground' and 'le[aves] the world just as it found it, and thus cannot be fairly

²⁷ See Response Letter, at 1.

²⁸ Response Letter, at 1.

²⁹ See May Response; June Response.

³⁰ See B-334644, Mar. 17, 2023 (finding an action was an agency statement when it was posted to agency website).

³¹ Guidance Directive, at 1; see *also* B-335316, Nov. 29, 2023 (finding an action that was meant to assist health care providers on a prospective basis to be of future effect).

³² See B-335316, Nov. 29, 2023; B-334237, Apr. 6, 2023; B-334005, Jan. 18, 2023.

described as implementing, interpreting, or prescribing law or policy.”³³ For example, in *Golden & Zimmerman, LLC*, the court concluded that a challenged portion of the Firearms Regulations Reference Guide published by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) was not a rule under the APA definition, finding that the relevant portion attempted to restate or report what already existed in relevant statutes, regulations, and rulings, and reflected views that had been reiterated by ATF at least 13 times over 40 years.³⁴

Following this principle in the CRA context, we too have found that an agency’s restatement of an existing policy or interpretation does not implement, interpret, or prescribe law or policy.³⁵ In B-335316, Nov. 29, 2023, we concluded that a Centers for Disease Control and Prevention (CDC) annual compilation of vaccine recommendations did not meet the APA definition of rule. We noted that CDC had previously announced and adopted the specific vaccine recommendations in prior publications, and the purpose of the compilation was merely to consolidate and summarize the adopted recommendations to assist health care providers.³⁶ Thus, the compilation itself did not implement, interpret, or prescribe law or policy.³⁷

Here, the Guidance Directive does not implement, interpret, or prescribe law or policy. Like the CDC vaccine recommendations, the Guidance Directive, “left the world as it found it.”³⁸ The Guidance Directive merely consolidates and restates existing EVP regulations and State policies interpreting and implementing those regulations. For instance, the first section of the Guidance Directive quotes directly from EVP regulations to state that the purpose of the SWT program “is to provide foreign college and university students with opportunities to interact with U.S. citizens, experience U.S. culture while sharing their own cultures with Americans they meet, travel in the United States, and work in jobs that require minimal training and are seasonal or temporary in order to earn funds to help defray a portion of their expenses.”³⁹

³³ *Golden & Zimmerman, LLC v. Domenech*, 599 F.3d 426, 432 (4th Cir. 2010) (alterations in original) (*quoting Independent Equipment Dealers Ass’n v. EPA*, 372 F.3d 420, 428 (D.C. Cir. 2004)).

³⁴ *Golden & Zimmerman, LLC*, 599 F.3d at 432.

³⁵ B-335316, Nov. 29, 2023.

³⁶ *Id.*

³⁷ *Id.*

³⁸ B-335316, Nov. 29, 2023 (*quoting* B-334005, Jan. 18, 2023).

³⁹ Guidance Directive, at 1; 22 C.F.R § 62.32(b).

The Guidance Directive also restates existing EVP regulations pertaining to wage protections for SWT participants. Paraphrasing 22 C.F.R. § 62.32(i)(1), the Guidance Directive notes that sponsors must ensure their SWT participants are being properly paid for the hours they work and that all SWT positions meet applicable wage requirements, paying the greater of the applicable federal, state, or local minimum wage; or pay commensurate with their U.S. counterparts.⁴⁰ It also notes that upon request by State, sponsors must furnish SWT participants' wage statements.⁴¹ According to State, this section of the Guidance Directive serves as a reminder of sponsors' existing obligations under the program pursuant to 22 C.F.R. §§ 62.32(i)(1), 62.10(e).⁴²

The final section of the Guidance Directive provides clarification on the regulatory prohibition at 22 C.F.R. § 62.32(g)(5) that precludes placing SWT participants in a position that requires a license. The Guidance Directive elaborates on the regulation's text explaining that an SWT participant cannot be placed in a position that requires the permission of qualified authorities in the form of a license or similar permission to allow the SWT participant to do an activity within a locale or municipality that would otherwise be prohibited without the license or permission.⁴³ The Guidance Directive also clarifies that the regulation does not prohibit certifications that document an SWT participant's accomplishments or skills in particular areas.⁴⁴ It then provides examples of such certifications that may be required for jobs that do not violate the licensing prohibition. Such certifications include first aid or cardiopulmonary resuscitation (CPR), server or beverage service, and lifeguard training.⁴⁵

Although this clarification goes beyond the language of current EVP regulations, it is still a restatement of existing State policy. State noted that it "has a long history of approving lifeguards who require certifications" in the SWT program and provided documentation showing 38,999 SWT participants in such positions since 2019.⁴⁶ State also explained that 35 states have certification requirements for food handling and alcohol serving that SWT participants would be required to obtain for those

⁴⁰ Guidance Directive, at 1; 22 C.F.R. § 62.32(i)(1).

⁴¹ Guidance Directive, at 1.

⁴² Response Letter, at 2.

⁴³ See Guidance Directive at 1; see 22 C.F.R. § 62.32(g)(5).

⁴⁴ Guidance Directive, at 2.

⁴⁵ Guidance Directive, at 2.

⁴⁶ June Response.

positions.⁴⁷ Collectively, these documents and State's response demonstrate a continuous interpretation that EVP regulations do not preclude placing SWT participants in a position that requires a certification.

Although the Guidance Directive consolidated existing EVP regulations and State policies for interpreting those regulations in one place, it did not itself implement, interpret, or prescribe law or policy or describe State's organization, procedure, or practice requirements. As such, the Guidance Directive does not meet the APA definition of rule.

CONCLUSION

The Guidance Directive does not meet the APA definition of rule because it does not implement, interpret, or prescribe law or policy or describe the organization, procedure, or practice requirements of an agency. Therefore, the Guidance Directive is not a rule for purposes of CRA and is not subject to CRA's submission requirements.



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⁴⁷ June Response, Attachment.