



SENT VIA E-MAIL

October 19, 2021

Re: RIN 1218-AD42

COVID-19 Vaccination and Testing Emergency Temporary Standard (ETS) Rulemaking Material submitted for International Association of Amusement Parks and Attractions (IAAPA)

On behalf of IAAPA, the global association for the attractions industry, we respectfully request the Office of Information and Regulatory Affairs (OIRA) and other appropriate federal agencies to review and implement the suggestions offered below. We are confident this will further the administration's goal of getting more Americans vaccinated – a goal which is shared by the U.S. attractions industry.

IAAPA represents more than 5,000 member organizations large and small across the United States including amusement and theme parks, water parks, resorts, family entertainment centers, zoos, museums, and more.

Prior to the pandemic, the attractions industry was a \$52 billion industry employing 10 million individuals directly and indirectly and contributing more than \$6.4 billion in tax revenues.

Some local markets are highly dependent on the travel and tourism industry and remain fundamentally harmed by the substantial loss of commerce during the pandemic. For example, in 2020 Central Florida experienced its worst year ever with overall leisure travel down 53%. That resulted in a \$25 billion loss to the regional economy, which also substantially harmed the state's economy since Central Florida's travel and tourism industry generates 10% of the state's economic output. Our industry was the first to be impacted by the pandemic, and it will be the last to fully recover.

Our industry is unique in many ways when compared to other industries. Operations are highly seasonal with peak seasons during summer and school breaks. By extension, industry employees a high percentage of seasonal, part-time, and temporary employees, many of whom are of youth employees where the work provides valuable experience but is also discretionary. For example, most outdoor waterparks are only open 120 days a year, and 70% of their workforce is comprised of 14–24-year-old youth employees.





Above and beyond the numbers, at the height of the pandemic, we were all reminded of the importance of health, family, friends, and fun. That's the core business of our members. They foster and facilitate safe, dynamic, and fun experiences that produce lifelong memories.

Given the broad scope and speed in which the Covid-19 Vaccination and Testing ETS is being drafted and implemented, we urge the Administration to provide maximum flexibility to businesses required to implement the new rules. Vastly different businesses will require flexibility to effectively implement the ETS. Additionally, substantial delay in enforcement penalties is necessary and warranted for businesses making best efforts to meet the requirements.

IAAPA urges consideration for the ETS in the areas of employer coverage, implementation, and process.

Employer Coverage:

Seasonal businesses. Full-time to seasonal/part-time staffing ratios in the parks and attractions industry are approximately 1-2 full time year-round employees to 10 part-time and seasonal employees during the high season. That ratio will cause administrative burdens managing a new vaccine/testing program. When viewed through the lens of overall employees on their payroll, these businesses appear much larger than the reality of their revenues and administrative capacity.

Recommendation:

Exempt seasonal businesses with under 100 full-time year around employees.¹ Should an exemption not be granted to seasonal businesses, those businesses should not be required to comply during certain periods of time (off season) when they are under the threshold of 100 full- time employees.

¹ Definitions of seasonal businesses exist in current law. For example, establishments defined as businesses that do not operate for more than seven months in any calendar year or businesses with average receipts for any 6 months of the year which are not more than 33 1/3 percent of its average receipts for the other 6 months a year are considered seasonal businesses. The Affordable Care Act also defined seasonal businesses.





Youth workers (under 18 years of age). Exempt or delay employer mandates and enforcement on this group. Alternatively, delay enforcement until more vaccination options are available for this age group, vaccination rates are comparable to the rate of the general population, and vaccines are required in middle and high schools.

100-employee threshold should be evaluated by location, not by company. The safety concerns of a business with ten employees in one location is very different from one in which 100 employees are working together.

Implementation Issues:

The ETS should provide businesses the flexibility to determine whether they will require the vaccine or enable a testing option at their workplace. Should a business provide the option of testing, the employer should have the flexibility of determining who is responsible for bearing the cost of testing and whether it must be done on uncompensated personal time.

The ETS should be clear that an employer has the right to require employees who, for whatever reason, opt not to vaccinate, bear the cost of testing, and have the testing done on personal time.

Should a business allow testing as an option, employees should be allowed to self-certify that they have received a test and that they are negative. The business should be able to use record of this certification as evidence of the employee's compliance.

The ETS should clearly state that businesses are not held liable for the compliance of their subcontractors or other businesses operating on their facilities. The primary business has no way of knowing whether their subcontractor is complying, and privacy concerns will make it impossible to make these determinations.

Similarly, businesses have limitations when they work with labor unions. We urge clarification in the ETS regarding the obligation of the business and that of the labor unions with which they work.

The ETS should allow maximum flexibility in the testing requirements. Businesses in rural areas, for example, often experience limitations in access to medical facility testing.





Additionally, it is unclear whether enough tests will be available to meet employee testing demands. The ETS should allow for a broad range of testing options (medical, pharmacy, over the counter, etc.)

We urge clear guidance in the ETS of the kind and type of vaccine/testing documentation required. The ETS should be clear in noting that businesses are not liable for the veracity of the testing/vaccination documentation of their employees or subcontractors.

We urge clear guidance on the documentation needed to meet the requirement and how long it must be kept.

Process:

We urge OSHA to provide a mechanism for real-time frequently asked questions (FAQ's). This will enable the agency to provide answers efficiently and quickly to the myriad questions that will be asked by businesses upon implementation of the rules.

We are optimistic that the administration's recent announcement to ease pandemic-related travel restrictions which will apply to all inbound international travelers, coupled with the plan to get more Americans vaccinated, will serve as the critical next step in not only revitalizing the \$51.6 billion a year attractions industry, but the U.S. travel industry, which continues to suffer the greatest impacts from the pandemic.

On behalf of the attractions industry, thank you for considering and implementing our suggestions. We have no doubt this will help us reach our shared goals of getting more Americans vaccinated and supporting a healthy and vibrant tourism economy.

Please let us know if you have any questions.

Sincerely

A handwritten signature in black ink, appearing to read "Hal McEvoy".

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