



January 19, 2022

By Electronic Submission (www.regulations.gov)

Mr. Douglas L. Parker
Assistant Secretary of Labor
Occupational Safety and Health Administration
United States Department of Labor
200 Constitution Avenue, NW
Washington, D.C. 20210

Re: GPA Midstream Association Comments on OSHA COVID-19 Vaccination and Testing
Emergency Temporary Standard; OSHA Docket No. OSHA-2021-0007

Dear Mr. Parker:

The GPA Midstream Association (“GPA Midstream”) is pleased to have the opportunity to submit the following comments on the COVID-19 Vaccination and Testing Emergency Temporary Standard published by the Occupational Safety and Health Administration (“OSHA”) in the Federal Register at 86 Fed. Reg. 61402-61555 (November 5, 2021) (“COVID ETS”). Because the COVID ETS is subject to a judicial stay, please incorporate GPA Midstream’s comments into OSHA’s consideration of whether to promulgate a final COVID-19 Vaccination and Testing Standard.

GPA Midstream has served the U.S. energy industry since 1921 and has nearly 60 corporate members. GPA Midstream members employ more than 56,000 employees who are engaged in a wide variety of services that move vital energy products such as natural gas, natural gas liquids (“NGLs”), refined products, and crude oil from production areas to markets across the United States, commonly referred to as “midstream activities.” The work of our members indirectly creates or impacts an additional 320,000 jobs across the U.S. economy. GPA Midstream members recover close to 90% of the NGLs such as ethane, propane, butane, and natural gasoline produced in the United States from more than 380 natural gas processing facilities. From 2017–2020, GPA Midstream members spent over \$115 billion in capital improvements to serve the country’s needs for reliable and affordable energy.

Our members’ operations, including natural gas processing plants, pipelines, and compressor stations, are located in remote areas in proximity to natural gas wells many miles from even small or medium-sized population centers. Our members’ employees often experience lengthy daily commutes to reach these remote work locations. At these locations,

most of our members' employees work predominately outdoors operating valves and equipment, taking readings, and checking pipelines. Some processing plant operators do work inside, however, monitoring the plant operating board instruments. These processing plants and other facilities operate continuously every hour and every day each year.

As approximately 80% of our members employ more than 100 employees, the vast majority of our members would be covered under the COVID ETS. OSHA states in the COVID ETS Preamble that "OSHA has implemented a 100-employee threshold for the requirements of this standard to focus the ETS on companies that OSHA is confident ***will have sufficient administrative systems in place to comply quickly with the ETS.***" 86 Fed. Reg. at 61403 (emphasis added). As set forth below, OSHA's rationale is inaccurate with respect to GPA Midstream members and compliance with the COVID ETS as a final standard will impose an undue logistical, administrative, and economic burden upon our members.

First, mandating that our members' employees be vaccinated will be self-defeating. The vast majority of our members' significant number of unvaccinated employees have personally chosen not to be vaccinated. Accordingly, should our members mandate that those employees be vaccinated, those employees will leave our members' employment and find work at small and mid-size companies that would not be covered by the COVID ETS by virtue of their employing fewer than 100 employees. Because these employees have unique skills, experience, and qualifications to operate midstream assets such as natural gas processing facilities, pipelines, and compressor stations, they will be extremely difficult, if not impossible, for our members to timely replace without significant negative impacts to reliability, processing, and supply of natural gas, NGLs, refined products, and crude oil across the country. Thus, in order to retain these critical employees and continue supplying reliable and affordable energy to our nation, our members will have no choice but to rely upon weekly testing in order to attempt to comply with the COVID ETS as a final standard.

Second, because our members' field employees do not reside in major metropolitan areas, accessible healthcare facilities, pharmacies, and other locations that potentially could administer or proctor weekly COVID-19 tests are scarce. To require weekly testing where the infrastructure to implement the testing mandate is absent would impose undue burdens on our members and their employees.

Third, because of the employees' remote residential locations, sending employees' weekly COVID-19 test samples to outside laboratories will not be timely because of the infrequent delivery service schedules in those areas. A uniform mandate fails to consider these on-the-ground realities.

Fourth, because of the COVID ETS requirement that employees cannot both self-administer and self-read their over-the-counter COVID-19 tests, the employees' remote residential and work locations logistically and practically will not allow our members to effectively observe their employees administering and reading their tests. An inflexible one-size-fits-all mandate does not account for this further burden and challenge to our members.

Fifth, requiring all unvaccinated employees to wear masks at all times when indoors, except when in a room by themselves with a closed door or when eating and drinking is unnecessarily restrictive. These requirements do not take into account alternative safe circumstances such as those in which employees are (i) in an open room and remain six or more feet from each other, (ii) in cubicles with separators (*e.g.*, Plexiglas or a solid opaque material) that are sufficiently high to prevent aerosols from traveling from one cubicle to another, and (iii) in rooms with strong fresh air ventilation. Enforcing such narrow exceptions to the face coverings as set forth in the COVID ETS will pose an undue burden on our members, especially given the remote locations in which many of our members' employees work.

Sixth, because our members' field employees do not work in close quarters and are not numerous (in most cases, fewer than ten employees may work at one location), the risk of COVID-19 transmission among these employees is much lower than in more crowded indoor working environments. Thus, excluding employees who work predominantly outside (*e.g.*, 66% or 75%) from any final COVID-19 Vaccination and Testing Standard would significantly reduce our members' administrative burden without materially increasing the risk of occupational COVID-19 transmission.

Seventh, GPA Midstream requests that OSHA strongly consider exempting employees who previously have contracted and recovered from COVID-19 within an appropriate time period (such as within the past six months) from the vaccination and testing requirements in any final standard. GPA Midstream understands that several countries currently allow proof of prior COVID-19 infection and recovery in lieu of proof of vaccinations for travelers. The same rationale should apply in any final COVID-19 Vaccination and Testing Standard.

Eighth, if the strict requirements of the current COVID ETS are promulgated into a final standard, many GPA Midstream members likely will outsource the implementation of the standard to third parties because of the significant administrative burden. Our members also will have no choice but to pay for the COVID-19 tests because requiring employees to bear the cost for their tests will be counterproductive in that it will give our members' large number of unvaccinated employees another reason to leave and secure employment with employers not subject to the standard. Such outsourcing (including test payments) is likely to be costly. For example, the quote that one GPA Midstream member that employs approximately 300 employees, 50% of whom are unvaccinated, obtained from a third party to administer the COVID ETS as currently written was \$35,000 per month.

Finally, GPA Midstream members already take voluntary steps to reduce the potential for COVID-19 transmission in their workplaces. Those efforts include requiring employees to maintain social distancing from others when feasible, requiring employees to wear face coverings indoors when within six feet of other employees, providing hand sanitizers in multiple locations and encouraging employees to use them frequently, and frequently cleaning and sanitizing common areas. Accordingly, a final COVID-19 Vaccination and Testing Standard that includes GPA Midstream members is unnecessary.

In sum, GPA Midstream advocates for a common sense approach to any final COVID-19 Vaccination and Testing Standard that balances restrictions that meaningfully reduce the risk of

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the transmissibility of COVID-19 in the workplace with the administrative burden on employers. Because it will be extremely difficult, if not impossible, for GPA Midstream members both to comply with the current COVID ETS if it is promulgated as a final standard, and maintain a sufficient number of workers to continue to provide reliable and affordable energy to the nation, GPA Midstream, on behalf of its members, respectfully requests that OSHA either (1) exempt employers engaged in midstream activities from any final COVID-19 Vaccination and Testing Standard altogether, or (2) revise the standard to (a) allow employees to self-administer and self-read their over-the-counter COVID-19 tests, (b) add other exceptions to the face covering requirement such as (i) remaining six or more feet away from other employees, (ii) permitting employees to remove face coverings when present in cubicles with sufficiently high solid separators that prevent aerosols from traveling from one cubicle to another, and (iii) when employees are present in rooms with strong fresh air ventilation, (c) allow employees who work mostly outdoors (*e.g.*, 66% or 75%) to be exempt from the standard, and (d) allow proof of prior COVID-19 infection and recovery in lieu of vaccination and testing.

Thank you for the opportunity to submit comments to the COVID ETS and for your consideration.

Respectfully submitted,

GPA Midstream Association

A handwritten signature in black ink, reading "Matthew Hite". The signature is written in a cursive, flowing style with a large initial "M".

Vice President of Government Affairs