

Memorandum

Date: June 10, 2025

To: Millicent Barajas, Executive Officer
Occupational Safety and Health Standards Board

From: Susan Eckhardt, Senior Safety Engineer
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Subject: Evaluation of Petition No. 608 to amend title 8 section 5199.1, Aerosol Transmissible Diseases – Zoonotic

1.0 INTRODUCTION

On April 1, 2025, the Division of Occupational Safety and Health (Cal/OSHA) received a petition via the Occupational Safety and Health Standards Board (Standards Board) from Valley Voices (Petitioner). Valley Voices is a 501(c)(3) nonprofit organization founded in 2019 that advocates for worker rights and promotes socioeconomic and health equity and civic participation, serving communities in Kings, Fresno, and Tulare counties. Valley Voices conducts outreach throughout Kings, Fresno, and Tulare counties and provides education and information on H5N1 avian influenza (bird flu) and other relevant health concerns so that workers and residents can better protect themselves.

The petitioner requests title 8 be amended based on the emerging public health threat to California's dairy and poultry workers due to the widespread risk of bird flu infection and transmission.

Labor Code Section 142.2 permits interested persons to propose new or revised standards concerning occupational safety and health and requires the Standards Board to consider such proposals. California Labor Code section 147 requires the Standards Board to refer to Cal/OSHA for evaluation of any proposed occupational safety and health standard.

2.0 PETITIONER'S PROPOSAL

The petitioner requests adoption of the following as an emergency temporary standard and as permanent additions and modifications to title 8 section 5199.1, Aerosol Transmissible Diseases -- Zoonotic (section 5199.1):

1. Clarify that when there is an overlap between standards governing quarantined facilities and standards governing facilities with infected animals, the more stringent standards should apply.

2. To limit transmission of H5N1 bird flu in the workplace, require employers to keep infected or exposed workers from the workplace until it is safe for them to return to work.
3. For workers excluded from the workplace, require employers to provide exclusion pay (including any expected overtime) and maintain an employee's pay, earnings, seniority, and all other employee rights and benefits, including the employee's right to their former job status, as if the employee had not been removed from their job.
4. Provide workers at facilities subject to a quarantine order, other infection control order and workers at operations involving handling, culling, transporting, killing, eradicating, or disposing of animals infected with zoonotic aerosol transmissible pathogens (zoonotic ATPs), or the cleaning and disinfection of areas used, or previously used, to contain such animals or their wastes with supplemental paid sick leave for missed work due to testing, vaccination, or medical monitoring.
5. Require employers to transmit any illness or symptom information reported by their workers to the local health department, CDPH and Cal/OSHA.

The petitioner offered regulatory text for proposed changes as an emergency temporary standard. Please see part 3.0 below.

3.0 PETITIONER'S PROPOSED AMENDMENTS TO TITLE 8

Below, in underline format, is the regulatory language recommended by the petitioner for a new emergency temporary standard in title 8.

(a) Scope.

(1) This section applies to all employers and places of employment subject to Title 8, section 5199.1 of the California Code of Regulations.

(b) Definitions. The following definitions apply to this section.

(1) "Avian influenza" refers to the disease caused by infection with avian influenza Type A viruses.

(2) "Avian influenza case" means a person who:

(A) Has a positive avian influenza test; or

(B) Has a positive avian influenza diagnosis from a licensed healthcare provider; or

(C) Is subject to an avian influenza-related order to isolate issued by a local or state health official;

(3) "Avian influenza hazard" means potentially infectious material that may contain avian influenza Type A viruses. Potentially infectious materials include airborne droplets, small particle aerosols, and dust particles.

(4) "Avian influenza symptoms" means signs and symptoms consistent with acute or lower respiratory tract infection or conjunctivitis, or complications of acute respiratory illness without an identified cause.

(5) "Avian influenza test" means a test for avian influenza A virus that is:

(A) Cleared, approved, or authorized, by CDC's Influenza Division Laboratory or a CDC designated laboratory using methods mutually agreed upon by CDC and the Council of State and Territorial Epidemiologists (CSTE); and

(B) Administered in accordance with the authorized instructions.

(6) "Avian influenza supplemental paid sick leave" means supplemental paid sick leave provided pursuant to this section.

(7) "Covered employee" means an employee who is excluded from the workplace pursuant to subsection (e).

(8) "Exposed group" means all employees at a work location, working area, or a common area at work, that had a close exposure to an animal with confirmed avian influenza A; or direct contact with surfaces contaminated with saliva, mucous, feces, blood, milk, or animal parts from infected animals; or unprotected close contact with a person who has a confirmed, probable, or symptomatic suspected case of human infection with avian influenza A virus.

(9) "Infectious period" means the following time period, unless otherwise defined by CDPH regulation or order, in which case the CDPH definition shall apply:

(A) For avian influenza cases who develop symptoms, from two days before the date of symptom onset until ten days have passed after symptoms first appeared and twenty-four hours have passed with no symptoms.

(B) For avian influenza cases who never develop symptoms, from two days before the positive specimen collection date through 10 days after the date on which the specimen for their first positive test for avian influenza was collected.

(10) "Worksite" means the building, facility, agricultural field, or other location where an avian influenza case was present during the infectious period.

(c) Employers must post a notice at the worksite that describes how to report avian influenza symptoms or exposure to avian influenza hazards to the employer without fear of retaliation. The notice shall be appropriate in content and vocabulary for the educational level, literacy, and language of employees.

(d) Immediately upon being covered by this section, the employer shall make avian influenza testing, medical evaluation, and ongoing medical treatment available at no cost to employees within the exposed group, during employees' paid time.

(e) The employer shall report any avian influenza cases or avian influenza symptoms at the workplace to the Chief, NIOSH, CDPH, and the local health department within 5 days of discovery.

(f) Employers shall immediately exclude from the workplace all avian influenza cases during the infectious period. If an order to isolate, quarantine, or exclude an employee is issued by a local or state health official, the employee shall not return to work until the period of isolation or quarantine is completed or the order is lifted.

(g) Upon excluding an employee from the workplace based on an avian influenza case, employers shall provide avian influenza supplemental paid sick leave and maintain an employee's pay, earnings, seniority, and all other employee rights and benefits, including the employee's right to their former job status, as if the employee had not been excluded from the workplace.

(1) A covered employee shall be entitled to an amount of avian influenza supplemental paid sick leave as follows:

(A) If the covered employee has a normal weekly schedule, the total number of hours the covered employee is normally scheduled to work for the employer over a one week period.

(B) If the covered employee works a variable number of hours, seven times the average number of hours the covered employee worked each day for the employer in the six months preceding the date the covered employee took avian influenza supplemental paid sick leave. If the covered employee has worked for the employer over a period of fewer than six months but more than seven days, this calculation shall instead be made over the entire period the covered employee has worked for the employer.

(C) If the covered employee works a variable number of hours and has worked for the employer over a period of seven days or fewer, the total number of hours the covered employee has worked for that employer.

(2) A covered employee may determine how many hours of avian influenza supplemental paid sick leave to use, up to the total number of hours to which the covered employee is entitled pursuant to subparagraph (A), (B), or (C). The employer shall make avian influenza supplemental paid sick leave available for immediate use by the covered employee, upon the oral or written request of the covered employee to the employer.

(3) The total number of hours of avian influenza supplemental paid sick leave to which a covered employee is entitled shall be in addition to any paid sick leave that may be available to the covered employee under Section 246.

(4) An employer shall not require a covered employee to use any other paid or unpaid leave, paid time off, or vacation time provided by the employer to the covered employee before the covered employee uses avian influenza supplemental paid sick leave or in lieu of avian influenza supplemental paid sick leave.

(5) Each hour of avian influenza supplemental paid sick leave shall be compensated at a rate equal to the following:

(A) For nonexempt covered employees, by one of the following:

(i) Calculated in the same manner as the rate of pay for the work week in which the employee uses paid sick time including any anticipated overtime pay.

(ii) Calculated by dividing the employee's total wages by the employee's total hours worked in the full pay periods occurring within the prior 90 days of employment; provided that, for nonexempt employees paid by piece rate, commission or other method that uses all hours to determine the regular rate of pay, total wages, shall be divided by all hours, to determine the correct amount of avian influenza supplemental paid sick leave under this subdivision.

(B) Avian influenza supplemental paid sick leave for exempt employees shall be calculated in the same manner as the employer calculates wages for other forms of paid leave time.

(C) Notwithstanding subparagraph (A), a covered employee who is entitled to an amount of avian influenza supplemental paid sick leave under subparagraph (B) of paragraph (2), shall be compensated for each hour of avian influenza supplemental paid sick leave at the regular rate of pay to which the covered employee would be entitled as if the covered employee had been scheduled to work those hours, pursuant to existing law or an applicable collective bargaining agreement.

(h) In addition to other remedies as may be provided by the laws of this state or its subdivisions, including, but not limited to, the remedies available to redress any unlawful business practice under Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions

Code, the Labor Commissioner shall enforce this section. For purposes of enforcement and to implement avian influenza supplemental paid sick leave, this section shall apply as follows:

(1) The Labor Commissioner shall enforce this section as if avian influenza supplemental paid sick leave constitutes “paid sick days,” “paid sick leave,” or “sick leave” under subdivisions (i) and (n) of Section 246, subdivisions (b) and (c) of Section 246.5, Section 247, Section 247.5, and Section 248.5.

(i) The requirement to provide avian influenza supplemental paid sick leave as set forth in this Section shall take effect 10 days after the date of enactment of this section

4.0 PETITIONER’S BASIS FOR AMENDMENT OF TITLE 8

Bird flu, also known as avian influenza or H5N1, poses serious health risks to California dairy and poultry employees working in close contact with infected animals. As of March 19, 2025, the U.S. Centers for Disease Control and Prevention (CDC) confirmed 70 reported human cases of bird flu in the United States.¹ As of April 22, 2025, the California Department of Public Health (CDPH) has reported 38 cases in California, almost all of which were linked to cattle as an exposure source.² The United States Department of Agriculture (USDA) reports that asymptomatic cows have tested positive for bird flu, meaning that the state and employers may underestimate the mitigation necessary to protect workers from infection.³

The virus is predominantly spreading through dairy operations. Milk with high concentrations of the virus can spread within the milking parlor, through rodents and other animals, or via humans carrying infectious material on their clothing or farm equipment. The CDC identified work in milking parlors on farms with animals infected with H5N1 viruses as having a high risk of exposure.⁴ Dairy workers are vulnerable to infection because during the milking process, they can inhale airborne milk particles and milk droplets can splash into their eyes or mouth. Although state and local public health agencies have been urging dairy farms and workers to take precautions against spreading infection, little is being done to curb human exposure.⁵

While the current bird flu strain has mostly caused relatively mild illness in humans—with common symptoms including conjunctivitis, fever, and respiratory difficulties—it has also caused several hospitalizations and one known death. Data suggests that if the virus enters the lungs directly, it can cause a severe infection.⁶

Recent scientific findings reveal that the virus has a higher likelihood of achieving pandemic potential than previously thought. If a virus, such as the bird flu, is given the opportunity to spread within and between organisms, it can evolve, adapt, and mutate. These mutations have a significant effect on the virus’ ability to

¹ CDC. H5 Bird Flu: Current Situation. Updated April 22, 2025. Accessed April 22, 2025. <https://www.cdc.gov/bird-flu/situation-summary/index.html>

² CDPH. Current Bird Flu Situation. Updated April 22, 2025. Accessed April 22, 2025. <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Bird-Flu.aspx>

³ US Department of Agriculture. April 24, 2024. Accessed April 22, 2025. <https://www.usda.gov/about-usda/news/press-releases/2024/04/24/usda-actions-protect-livestock-health-highly-pathogenic-h5n1-avian-influenza#:~:text=WASHINGTON%2C%20April%2024%2C%202024%20%E2%80%93,disease%20and%20limit%20its%20spread>

⁴ CDC. Information for Workers Exposed to H5N1 Bird Flu. January 6, 2025. Accessed April 22, 2025. <https://www.cdc.gov/bird-flu/prevention/farm-workers.html>

⁵ University of California, Merced. Producing Risks: Dairy Workers’ Experiences and the Need for Worker-Centered Bird Flu Mitigation. February 2025. Accessed April 22, 2025. https://clc.ucmerced.edu/sites/clc.ucmerced.edu/files/page/documents/dairy_worker_brief_final_5.pdf

⁶ Nature. Pathogenesis of bovine H5N1 clade 2.3.4.4b infection in macaques. Published January 15, 2025. Accessed April 22, 2025. <https://doi.org/10.1038/s41586-025-08609-8>

transmit between organisms and cause severe disease. The increasing likelihood of a mutation that allows the virus to be more easily transmitted between humans presents a serious threat to all Californians, including California workers. Historically, H5N1 strains have posed significant threats to human health due to their high mortality rates and potential for transmission. According to data from the World Health Organization, since 2003, 950 humans have been infected by all strains of bird flu outside the U.S., with 464 cases resulting in death, representing a close to 50 percent mortality rate.⁷

5.0 APPLICABLE TITLE 8 REGULATIONS

Section 5199.1 outlines the requirements for employers whose employees work with animals or untreated animal products, handle animal carcasses or wastes, clean or disinfect areas used, or previously used, to contain animals infected with zoonotic ATPs or their wastes, or work in laboratories dealing with samples, cultures, or other materials that may contain zoonotic ATPs.

Section 5199.1. includes various requirements for establishments with animals in subsections (c) and (d). While subsections (c) and (d) apply independently in certain situations, there are circumstances where both subsections (c) and (d) apply.

Subsection (c) applies when the USDA or California Department of Food and Agriculture (CDFA) issues a quarantine, movement restriction, or infection control order due to an increased risk of zoonotic ATP infection. Employers must identify restricted areas, supervise entry into these areas, provide protective equipment including respiratory protection, ensure the provision of sanitary facilities, provide medical services, conduct training, and maintain entry records into restricted areas.

5199.1 Subsection (c) is excerpted below:

5199.1 Aerosol Transmissible Diseases - Zoonotic

(c) When the USDA or the CDFA issues a quarantine order, movement restriction, or other infection control order applicable to an establishment due to an increased risk of zoonotic ATP infection, the employer shall establish, implement and maintain effective written zoonotic disease control procedures to protect employees from hazards related to undetected or early infection in animals. These procedures shall be available onsite at all times when employees are present, and shall include the following elements:

(1) The employer shall identify restricted areas in which occupational exposure to potentially infectious animals may occur and shall post signs at all entrances to those areas identifying them as restricted areas. These signs shall be in all languages necessary to ensure that they are understood by all employees who may be in the vicinity of an entrance to the restricted area.

(2) The employer shall ensure that all employees who enter into restricted areas are protected as follows:

(A) Those employees who enter into the restricted area shall be supervised by a person who is knowledgeable in the employer's zoonotic disease control procedures.

⁷ World Health Organization. Avian Influenza Weekly Update Number 983. Human infection with avian influenza A(H5) viruses. January 31, 2025. Accessed April 22, 2025. https://cdn.who.int/media/docs/default-source/wpro---documents/emergency/surveillance/avian-influenza/ai_20250131.pdf?sfvrsn=5f006f99_149

(B) The employer shall provide those employees with, and the employer shall ensure that the employees use, protective clothing and equipment, such as coveralls or similar whole-body clothing, head coverings, gloves, and foot coverings. The employer shall provide for the disposal or laundering of this clothing and equipment in a manner that will not further expose employees to potentially infectious materials. Laundry shall be handled in accordance with Section 5193(d)(3)(J) of these orders. Where the disease may be transmitted by contact with the eyes or mucous membranes, appropriate eye, mouth and nose protection shall be used. The use of personal protective equipment shall comply with Sections 3380 through 3387 of these orders.

(C) The employer shall provide, and ensure that the employees use approved respiratory protection when entering into enclosed areas in which aerosols from potentially infectious animals or animal wastes are present. Respirator use shall be in accordance with Section 5144 of these orders.

(D) The employer shall provide sanitary facilities, change rooms, shower rooms, and drinking water, and a method to access them. These facilities shall meet the requirements of Sections 3360 through 3368 of these orders. Exception: Where change rooms and shower rooms are not feasible, the employer shall implement alternative measures for sanitation and changing clothes that protect employees from infectious materials that may be present on their clothing or their person.

(E) The employer shall provide all medical services, including surveillance, vaccinations, and prophylaxis recommended by the CDC, CDPH or local health officer for exposed employees.

(F) The employer shall provide training that is appropriate in content and vocabulary for the educational level, literacy, and language of employees. This training shall include the nature of the zoonotic disease hazard, the employer's control measures, the use of personal protective equipment and respiratory protective equipment, decontamination procedures, the employer's medical services program including recommended surveillance, evaluations, vaccinations and prophylaxis, and heat illness prevention.

(G) The employer shall establish procedures for recording the entry of persons into the restricted area. These records shall be maintained and made available in accordance with subsection (e).

(3) The additional protective measures required by subsection (c) are no longer required if testing acceptable to the agency placing the movement restriction, quarantine or other infection control order determines that the premises is free from infection, and is no longer at increased risk, although the movement restriction may remain in place.

Subsection (d) applies to operations involving the handling, culling, transporting, killing, eradicating, or disposing of animals infected with zoonotic ATPs, as well as cleaning and disinfecting areas used to contain such animals or their wastes. Employers must develop written procedures; list jobs, tasks or procedures which may have occupational exposure; list measures used to control employee exposure; provide drinking water and sanitation facilities; implement procedures to protect workers from heat illness; implement health surveillance; provide appropriate supervision; ensure the provision and use of protective equipment including respiratory protection; provide medical services; ensure proper documentation; manage hazardous atmospheres; monitor areas adjacent to areas where there is application of toxic gases; comply with confined space regulations; follow fumigation standards; follow appropriate decontamination procedures; and handle waste safely.

Subsection 5199.1(d)(8) covers medical services the employer must provide to employees. However, this subsection does not include requirements to keep H5N1-infected or exposed employees from the workplace until it is safe for them to return to work, to provide exclusion pay for employees excluded from the

workplace, or to provide employees at specified facilities with supplemental paid sick leave for missed work due to testing, vaccination, or medical monitoring.

Subsection (d) is excerpted below:

5199.1 Aerosol Transmissible Diseases - Zoonotic

(d) Every employer with work operations involving handling, culling, transporting, killing, eradicating, or disposing of animals infected with zoonotic ATPs, or the cleaning and disinfection of areas used, or previously used, to contain such animals or their wastes, shall establish, implement, and maintain written zoonotic disease control procedures to control the risk of transmission of disease from the animals to employees. These procedures shall be available onsite at all times when employees are present, and shall be maintained as an employee exposure record, in accordance with Section 3204 of these orders.

(1) The written procedures shall include all of the following as they apply to the employer's operation:

(A) A detailed work plan including an assessment of the risks to employees, including biological, chemical, physical, and safety hazards, and a description of site control measures including designating a restricted area consisting of contaminated zones and contaminant reduction zones. Support equipment and personnel shall be staged outside of the restricted area.

(B) A list of all jobs, tasks or procedures in which employees may have occupational exposure.

(C) The measures the employer will use to control employee exposure, including each of the following:

1. Engineering controls, work practice controls, and exposure monitoring.
2. Procedures for the safe handling of hazardous substances, including hazardous substances used for disinfection and decontamination.
3. Procedures for the application of toxic or asphyxiant gases, if such gases are to be used in the operation.
4. Respiratory protection.
5. Personal protective equipment and protective clothing.
6. Decontamination procedures.
7. Disposal of animal waste and contaminated personal protective equipment.
8. Medical services.
9. Training.
10. Recordkeeping.

(D) Procedures to provide employees ready or frequent access to drinking water and sanitation facilities, including appropriate decontamination methods for employees who need to access these facilities.

(E) Procedures to protect employees from the risk of heat illness.

(2) Operations in the restricted area shall be supervised at all times by a person knowledgeable about and authorized by the employer to enforce the employer's zoonotic disease control procedures. The supervisor shall ensure that all persons entering the restricted area have been trained in the control

procedures applicable to the site or operation and are protected in accordance with this section. The supervisor shall record the identity and time of entry and exit for each person who enters and/or exits the restricted area. These records shall be maintained and made available in accordance with subsection (e).

(3) The employer shall provide and ensure that employees use personal protective equipment and clothing that meets the requirements of Sections 3380 through 3387 of these orders and is adequate to ensure that hazardous substances and contaminated fluids and aerosols do not penetrate to the employee's mucous membranes or skin. The equipment and clothing shall be reasonably comfortable and shall not unduly encumber the employee's movements necessary to perform the work. The equipment and clothing shall be compatible with decontamination and disposal methods available at the site.

(4) Respiratory Protection. The employer shall provide and ensure that employees use appropriate respiratory protection during operations in the restricted area in accordance with Section 5144 of these orders, unless the employer has demonstrated through objective evidence, that engineering and work practice controls have eliminated the risk of disease transmission to employees. Respirator selection shall be based on the infectious disease hazard and on any hazardous substances that may require respiratory protection. Respirators shall be used until work areas have been decontaminated. Employees who work in enclosed areas shall use, at a minimum, elastomeric facepiece respirators or powered air purifying respirators (PAPR) with appropriate cartridges, unless the employer has demonstrated through objective evidence, that such use is not necessary to protect employees. The employer shall provide and ensure that employees use appropriate eye protection, unless employees use full facepiece respirators or PAPRs that provide eye protection.

(5) Additional procedures for the application of toxic or asphyxiant gases. Employers whose work operations include areas in which toxic or asphyxiant gases are applied shall develop and implement written procedures that ensure all of the following:

* * * * *

(6) Disposal. Procedures for treatment and disposal of animal waste and contaminated personal protective equipment and clothing shall minimize employee exposure to zoonotic disease hazards, and shall be in accordance with applicable standards of the California Environmental Protection Agency and the United States Environmental Protection Agency.

(7) Decontamination. The employer shall ensure that employees are properly decontaminated when leaving the restricted area and that contaminated clothing and equipment are appropriately decontaminated or disposed of. Decontamination facilities shall include change rooms and shower facilities that meet the requirements of Sections 3360 through 3368 of these orders.

Exception: Where change rooms and shower facilities are not feasible, the employer shall implement alternative effective measures for decontamination and changing clothes that protect employees from infectious materials and hazardous substances that may be present on their clothing or their person.

(8) Medical Services. The employer shall provide a medical services program to all employees who enter the restricted area. The employer shall consult a PLHCP knowledgeable about chemical and zoonotic disease hazards in developing the program. The program shall maintain medical confidentiality in accordance with Section 3204 of these orders. The employer shall provide all vaccinations, prophylaxis, and medical surveillance recommended by the PLHCP, the CDC, the CDPH or the local health officer for employees involved in these operations. The medical services program shall include, at a minimum:

(A) Initial medical evaluation to be provided prior to first entrance into a restricted area. This shall include a respirator medical evaluation, in accordance with Section 5144(e) of these orders.

(B) Surveillance for signs and symptoms of zoonotic disease. Employees exhibiting signs or symptoms of zoonotic disease and employees requesting referral shall be referred immediately to the PLHCP for follow-up evaluation.

(C) Surveillance for signs and symptoms of over-exposures to hazardous substances as appropriate for substances present in the work operation. Employees exhibiting these signs or symptoms shall be referred immediately to the PLHCP for follow-up evaluation, and the employer shall further investigate the source of the potential over-exposure and take corrective measures, as needed.

(D) Provision of vaccinations or prophylaxis as recommended by the CDC, the CDPH, the local health officer, or the PLHCP.

(E) Follow-up medical evaluations as recommended by the CDC, the CDPH, the local health officer or the PLHCP.

(F) The PLHCP shall provide the employer with a written report that shall contain only the following information:

1. For respirator medical evaluations, information shall be limited to the information required in Section 5144(e)(6)(A) of these orders.

2. For provision of vaccination or prophylaxis, the PLHCP shall inform the employer as to whether the employee has been provided with vaccine and/or prophylaxis, and whether the employee is authorized to enter the restricted area.

3. For referrals and follow-up medical evaluations, the PLHCP shall inform the employer that the employee has received the evaluation, whether additional evaluation is required, and whether the employee is authorized to work in the restricted area.

(9) Training. Employees shall receive training upon initial assignment, when site conditions are substantially changed, and when hazards are newly introduced or newly recognized. Training shall be appropriate in content and vocabulary for the educational level, literacy, and language of employees. The training shall include each of the following as they apply to the work operation:

(A) The identification and description of the zoonotic diseases that may be present in the work operation, and their signs and symptoms.

(B) The processes and procedures employees will use in restricted areas or when dealing with infected animals or their waste.

(C) The employer's safety program, including engineering and administrative controls, exposure monitoring and the results of exposure monitoring, the use of personal and respiratory protection equipment, cleaning and decontamination procedures, access to sanitation facilities and drinking water, and methods to control the risk of heat illness.

(D) The meaning of signs that will be used onsite.

(E) Hazard communications training in accordance with Section 5194 of these orders.

(F) The employer's medical services program.

6.0 APPLICABLE TITLE 17 REGULATIONS

Title 17 California Code of Regulations (CCR) Section (§) 2500 requires health care providers to report cases or

suspected cases of human bird flu to the local health department.

Title 17, CCR §2500

§ 2500. REPORTING TO THE LOCAL HEALTH AUTHORITY.

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§ 2500(b) It shall be the duty of every health care provider, knowing of or in attendance on a case or suspected case of any of the diseases or condition listed below, to report to the local health officer for the jurisdiction where the patient resides. Where no health care provider is in attendance, any individual having knowledge of a person who is suspected to be suffering from one of the diseases or conditions listed below may make such a report to the local health officer for the jurisdiction where the patient resides.

§ 2500(c) The administrator of each health facility, clinic, or other setting where more than one health care provider may know of a case, a suspected case or an outbreak of disease within the facility shall establish and be responsible for administrative procedures to assure that reports are made to the local officer.

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§ 2500(a)(15) "Health care provider" means a physician and surgeon, a veterinarian, a podiatrist, a nurse practitioner, a physician assistant, a registered nurse, a nurse midwife, a school nurse, an infection control practitioner, a medical examiner, a coroner, or a dentist.

REPORTABLE COMMUNICABLE DISEASES §2500(j)

DISEASE NAME

URGENCY

Influenza due to novel strains (human)

Report immediately by telephone

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7.0 APPLICABLE FEDERAL OSHA REGULATIONS

There are no Federal OSHA regulations that specifically require employers to take action to protect employees from zoonotic ATDs or bird flu.

8.0 APPLICABLE CDC GUIDANCE DOCUMENTS

The Centers for Disease Control and Prevention (CDC) has guidance documents for employers to assist them in reducing worker exposure to bird flu. They also have guidance documents for workers to reduce their exposure to bird flu.

The CDC employer guidance document covers information on how workers are exposed to bird flu.⁸ Workers may be exposed in two main ways. The first is when working with animals confirmed or potentially infected with avian influenza A viruses. The second is when working with materials, including raw milk, that are contaminated or potentially contaminated with avian influenza A viruses. The guidance document also explains how to perform a hazard site assessment and includes a hazard assessment worksheet for dairy

⁸ CDC. Interim Guidance for Employers to Reduce Exposure to Avian Influenza A Viruses for People Working with Animals. January 10, 2025. Accessed April 22, 2025. <https://www.cdc.gov/bird-flu/prevention/worker-protection-ppe.html>

facilities.⁹ In addition, the document also covers levels of exposure and control measures to protect employees including engineering controls, administrative controls, and personal protective equipment.

The CDC guidance document for workers covers how bird flu spreads at the workplace and the related signs and symptoms of bird flu.¹⁰ It also discusses the tasks associated with high, medium and low exposures. Prevention steps and strategies are discussed including how to wear personal protective equipment correctly. This document contains several links to fact sheets on the use of personal protective equipment.

Another CDC document provides instructions on what an employer should do when an employee feels sick.¹¹ If an employee gets any new symptoms of illness while working with confirmed or potentially infected animals or confirmed or potentially contaminated byproducts or surfaces and during the 10 days after their last exposure, CDC advises employees to stay home and stay away from others as much as possible until they know whether they have H5N1 bird flu. If they have H5N1 bird flu, CDC advises employees to stay home and away from others until they feel better. The document instructs the infected employee to tell their supervisor and medical provider so that they may contact the state/local health department who will determine what to do next and may test for H5N1 bird flu.

9.0 ANALYSIS

Avian influenza (infection with H5N1) is a health hazard to those working with infected livestock, as well as the public at large, as explained in part 4 of this evaluation. Existing section 5199.1 requires employee protections from H5N1 infection, as explained in part 5 of this evaluation.

9.1 Petitioner's Request for an Emergency Temporary Standard

The petitioner proposes language for an emergency temporary standard as an amendment to title 8. As is stated in the scope of the petitioner's proposal, their proposal would be for a new section added to title 8 that would cover the same establishments covered by existing section 5199.1 (primarily employers with employees who have regular occupational exposure to animals or untreated animal products).

Cal/OSHA does not believe that an emergency temporary standard is necessary to address the issues raised in the petition for the current bird flu outbreak in California (beginning in dairy herds at the end of August 2024) for the following reasons:

- The last known human case of bird flu in California was on January 14, 2025.¹²
- 630 of the 766 dairies infected with bird flu in California since August 2024 are fully recovered and released from quarantine.¹³
- There are currently no active infections of bird flu in California poultry flocks.¹³

⁹ CDC. Hazard Assessment Worksheet for Dairy Facilities. November 7, 2024. Accessed April 22, 2025. https://www.cdc.gov/bird-flu/media/pdfs/2024/09/351875-A_FRM_NCEZID_H5N1_Risk_508_2.pdf

¹⁰ CDC. Information for Workers Exposed to H5N1 Bird Flu. January 6, 2025. Accessed April 22, 2025. <https://www.cdc.gov/bird-flu/prevention/farm-workers.html>

¹¹ CDC. Protect Yourself from H5N1 Bird Flu. What to do if you feel sick. September 2024. Accessed April 22, 2025. <https://www.cdc.gov/bird-flu/media/pdfs/2024/09/H5-What-to-do-if-you-feel-sick-09192024-FINAL-CLEAN.pdf>

¹² California Department of Public Health. Current Bird Flu Situation. Accessed on May 23, 2025. <https://www.cdph.ca.gov/Programs/CID/DCDC/pages/Bird-Flu.aspx>

¹³ California Department of Food and Agriculture. Avian Influenza Updates. Accessed on May 23, 2025. https://www.cdafa.ca.gov/ahfss/Animal_Health/Avian_Influenza.html

9.2 Petitioner's Request for Clarification of Application of Subsections 5199.1(c) and (d)

Cal/OSHA agrees with the Petitioner that there is insufficient clarity on when subsection (c) applies as opposed to subsection (d) since both subsections have similar, but not identical requirements. Subsection (c) applies when the USDA or the CDFA issues a quarantine order, movement restriction, or other infection control order applicable to an establishment due to an increased risk of zoonotic ATP infection. Subsection (d) applies to operations involving handling, culling, transporting, killing, eradicating, or disposing of animals infected with zoonotic ATPs, or the cleaning and disinfection of areas used, or previously used, to contain such animals or their wastes. If the conditions of subsection (c) and (d) exist at the same time (which is common), then the employer must comply with both subsections. Section 5199.1 should be amended to clarify the scope and application of subsections (c) and (d) through normal rulemaking.

9.3 Petitioner's Request for Exclusion and Exclusion Pay for Exposed and Infected Workers

Cal/OSHA agrees with the Petitioner that employers should be required to temporarily remove exposed workers from the workplace when recommended by a physician or other licensed health care professional. When employees have been exposed to the H5N1 virus and exhibit symptoms of H5N1 infection, or test positive for H5N1 infection, the CDC advises employees to stay away from work and to stay away from others as much as possible until they know whether they have H5N1 bird flu.¹² This is to prevent the possible spread of avian influenza amongst employees and community members. Further, it is important that employees be tested for H5N1 infection if they have been exposed to the virus or exhibit symptoms.

Cal/OSHA agrees with the Petitioner that for any employee temporarily removed from the workplace, employers should be required to maintain the employee's earnings, seniority, and all other employee rights and benefits. This is already required for workers covered by section 5199, Aerosol Transmissible Diseases. It was shown during the COVID-19 pandemic that if employees did not receive exclusion pay, they were more likely to come to work while sick and infect other people there.¹³

Section 5199.1 should be amended through normal rulemaking to include provisions for temporary removal and temporary removal pay for occupationally exposed or infected employees consistent with section 5199.

9.3 Petitioner's Request for Bird Flu Reporting

Cal/OSHA does not agree with the Petitioner that employers should be required to report illness or symptoms reported by their workers to Cal/OSHA or CDPH. Health care providers are already required by Title 17 section 2500 to report bird flu cases to their local health department, as described in part 6 of this evaluation. This recommendation is consistent with the reporting required by section 5199, Aerosol Transmissible Diseases.

10.0 CONCLUSION

Cal/OSHA recommends that Petition file No. 608 be GRANTED as follows:

1. Cal/OSHA recommends granting the petition to the extent that rulemaking be limited to making changes

to existing section 5199.1.

2. Cal/OSHA recommends denying the request for an emergency temporary standard.
3. Cal/OSHA recommends granting the petition to clarify when subsections 5199.1(c) and (d) apply.
4. Cal/OSHA recommends granting the petition to add requirements to section 5199.1 for exclusion and exclusion pay for occupationally exposed or infected workers.
5. Cal/OSHA recommends denying the request to require employers to report H5N1 infections or symptoms of bird flu amongst their employees to the local health department, CDPH, or Cal/OSHA.

cc: Debra Lee, Cal/OSHA Chief