

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**PROPOSED PETITION DECISION OF THE
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
(PETITION FILE NO. 608)**

I. INTRODUCTION

On March 20, 2025, the Occupational Safety and Health Standards Board (Board or OSHSB) received a petition from Valley Voices and other supporting organizations¹ regarding the H5N1 avian influenza (bird flu) virus. The petition seeks regulatory clarity and requests amendments to the current section 5199.1 Aerosolized Transmissible Diseases - Zoonotic standard to provide added protections for workers at establishments at increased risk of zoonotic infections, including those who work at dairies.

II. SUMMARY

The Petitioner requests both an emergency regulation to protect workers from H5N1 avian influenza and a permanent regulation to protect workers from infectious diseases.

The Petitioner requests to amend section 5199.1 Aerosol Transmissible Diseases - Zoonotic standard. The Petitioner requests:

- (1) clarification that when there is an overlap between quarantined facilities and facilities with infected animals, the more stringent standards should apply;
- (2) that it be required that employers keep infected or exposed workers from the workplace until it is safe for them to return to work;
- (3) exclusion pay;
- (4) supplemental paid sick leave; and
- (5) reporting of any illness or symptom information reported by workers to the local health department, California Department of Public Health (CDPH) and Cal/OSHA.

¹ California Coalition for Worker Power, California Immigrant Policy Center, California Nurses Association/National Nurses United, Centro Binacional para el Desarrollo Indigena Oaxaqueño, East Bay Sanctuary Covenant, Employee Rights Center, Hijos Del Campo, Lideres Campesinas, Mixteco/Indegen Community Organizing Project, National Union of Healthcare Workers, Southern California Coalition for Occupational Safety and Health, The Way Resource Center, UFCW Western States Council, Universidad Popular and Worksafe.

The Petitioner states that 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, and CDPH has reported 38 cases in California, almost all linked to cattle as an exposure source. The Petitioner believes that the virus is much more widespread than the CDC's official numbers suggest given that the pathogen has been detected in over 700 dairy herds in California, there have been no systematic inspections of dairies and recent blood test analysis involving 115 dairy workers revealed that 7% of those tested showed signs of previous bird flu infection. The Petitioner adds that dairy workers, who are mostly Latino, immigrant and undocumented low wage workers, are vulnerable to infection because during the milking process they can inhale airborne milk particles and milk droplets can splash into their eyes.

III. RELEVANT STANDARDS

Section 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.

(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.

(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.

IV. CAL/OSHA'S EVALUATION

The Cal/OSHA evaluation confirms that while section 5199.1 subsections (c) and (d) apply independently in certain situations, there are circumstances where both subsections (c) and (d) apply. 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 US Department of Agriculture or the California Department of Food and Agriculture (CDFA) issues a quarantine order, movement restriction or other infection control order applicable to an establishment due to an increased risk of zoonotic Aerosol Transmissible Diseases (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. Cal/OSHA concludes section 5199.1 should be amended to clarify the scope and application of subsections (c) and (d) through normal rulemaking.

Cal/OSHA states that employers should be required to temporarily remove exposed workers from the workplace when recommended by a physician or other licensed health care professional. This is to prevent the possible spread of avian influenza amongst employees and community members.

Cal/OSHA further 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. According to Cal/OSHA, this is already required for workers covered by section 5199, Aerosol Transmissible Diseases. Cal/OSHA recalls supporting data 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. Thus, Cal/OSHA concludes 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.

However, 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.

Because health care providers are already required by title 17 section 2500 to report bird flu cases to their local health department, Cal/OSHA asserts this recommendation is consistent with the reporting required by section 5199, Aerosol Transmissible Diseases.

In 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.

V. BOARD STAFF'S EVALUATION

In regard to the Petitioner's request for clarification of the current standard, Board staff agrees that both subsection (c) and (d) can apply at the same time to the same facility but does not see significant differences in the required protections. Board staff asserts both subsections require the establishment of a restricted area in which employees are supervised by someone knowledgeable in the employer's exposure prevention procedures. Both subsections require the provision and use of appropriate personal protective equipment (PPE) and procedures for the safe disposal or laundering of the PPE.

Board staff also notes both subsections require the employer to track entry to the restricted areas, provide medical services (surveillance of symptoms, vaccinations as needed, etc.) and train employees on the onsite exposure control plan. Although the two subsections are not identical, Board staff sees no conflicts between the subsections that would prevent enforcement of both simultaneously or that would elevate the risk of employee exposure when both must be followed.

Moving on to the issue of the exclusion of employees infected with or exposed to the bird flu virus, Board staff notes title 8 regulations have precedent for requiring employers to pay sick or exposed workers who must be removed from an exposure to protect their health. During the early stages of the COVID-19 pandemic, employers

were required to provide supplemental sick leave,² though the requirement was removed from later versions of the emergency and permanent regulation.³

Board staff next explores the subject of exclusion pay in other industries. Section 5198 “Lead” also has provisions for medically removing an employee from a hazardous exposure with pay for up to 18 months.⁴ Other regulations with medical removal provisions include sections 5202 (methylene chloride), 5204 (respirable crystalline silica) and 5205 (beryllium), each of which allow for up to 6 months of pay for work in an exposure-free position. Medical removal for the exposures listed above, however, allows employers to relocate employees to jobs that do not have exposure to the substance of concern. The exclusion pay requested by the Petitioner would require that employees be entirely removed from the workplace where assigning alternate duties may not be feasible.

The Board staff evaluation notes as of January 1, 2025, all California employers are required to provide five days or 40 hours of paid sick leave to employees.⁵ Board staff notes that the mission of the Board “is to promote, adopt, and maintain reasonable and enforceable standards that will ensure a safe and healthful workplace for California workers.”⁶ Staff does not believe that providing 10 days of exclusion pay for each exposure incident is reasonable, given CDPH categorization of H5N1 as “low risk.”

In the previously mentioned title 8 sections where employees are removed from exposures to hazardous materials, the substance in question is harmful to employee health, even at low exposure levels. According to the public health agencies mentioned previously, the current H5N1 virus poses a low risk to the public and causes mostly mild symptoms. Although H5N1 exposure has led to a death in the nation, the Louisiana Department of Health reports that “[t]he patient was over the age of 65 and was reported to have underlying medical conditions.” They also state that “the patient contracted H5N1 after exposure to a combination of a non-commercial backyard flock and wild birds.”⁷

As the Petitioner points out, some scientists are concerned that the H5N1 virus could combine with seasonal flu virus and mutate, leading to a deadly pandemic. Board staff

² Governor’s Exec. Order No. N-51-20 (April 16, 2020), accessed May 5, 2025, <https://www.gov.ca.gov/wp-content/uploads/2020/04/4.16.20-EO-N-51-20.pdf>. Up to 80 hours, depending on the situation.

³ Labor Commissioner’s Office, “FAQs on Exclusion Pay Under the Emergency Temporary Standard,” updated March 2022, accessed May 5, 2025, <https://www.dir.ca.gov/dlse/COVID19Resources/FAQ-Exclusion-Pay-ETS.html>.

⁴ Cal. Code Regs., tit. 8, § 5198. <https://www.dir.ca.gov/Title8/5198.html>. See subsection 5198(k) “Medical Removal Protection” for specifics.

⁵ Labor Commissioner’s Office, “California Paid Sick Leave: Frequently Asked Questions,” updated December 2, 2024, accessed May 5, 2025, https://www.dir.ca.gov/dlse/paid_sick_leave.htm

⁶ OSHSB, “Occupational Safety & Health Standards Board (OSHSB),” accessed May 6, 2025, <https://www.dir.ca.gov/oshsb/>.

⁷ Louisiana Department of Health (LDH), “LDH Reports First U.S. H5N1-related Human Death: Current General Public Health Risk Remains Low,” January 6, 2025, accessed May 6, 2025, <https://ldh.la.gov/news/H5N1-death>.

acknowledges the logic of these concerns but assert requiring exclusion pay as requested by the Petitioner doesn't meet the same threshold as "Lead."

Board staff evaluated Petitioner's request that employers be required to report all bird flu-related illness or symptom information to the local health department, CDPH and Cal/OSHA. Cal/OSHA hosts a webpage with bird flu information for employers. The site points out that employers are currently required to report serious injuries and illnesses to Cal/OSHA.⁸ According to Board staff, the Petitioner is concerned, however, that only reporting serious injuries, illnesses and deaths will not effectively prevent the spread of the virus with its mostly mild symptoms.

CDPH already has an established procedure for reporting cases of bird flu. In a guidance document entitled "Human Avian Influenza A(H5N1)," the CDPH states, "Clinicians should immediately notify their local health department (LHD) if they suspect avian influenza in a patient and LHDs should immediately notify the California Department of Public Health (CDPH) of suspect cases."⁹

When an employee experiencing symptoms sees a clinician for care, the clinician must report the suspected case to the LHD, who then reports to the CDPH. Requiring employers to report "any illness or symptom information reported by their workers" to all three entities (LHD, CDPH and Cal/OSHA) is redundant and might not have any additional benefits.

Furthermore, Board staff envisions that in order to comply with such a requirement, every employee reporting any bird flu symptom would require the employer to submit a report to the three entities, constituting an additional burden of time and money for the employer with the likelihood of no improvement in the reporting of symptoms to the CDPH.

Board staff concluded Petitioner did not meet the requirement for an emergency temporary standard on the basis of the Office of Administrative Law (OAL) emergency regulatory process.¹⁰ Additionally, Board staff recommends against implementing any updates to section 5199.1 through the emergency rulemaking process. Staff points to the current public health risk rating of the CDC and CDPH as "low" to support this request.

In conclusion, Board staff recommends that Petition File No. 608 be denied with regard to proceeding via the emergency rulemaking process. Staff also recommends the Board

⁸ Cal/OSHA, "Bird Flu Information for Employers," updated April 2025, accessed May 6, 2025, <https://www.dir.ca.gov/dosh/avian-flu/For-Employers.html#:~:text=Employers%20have%20a%20legal%20responsibility%20to%20immediately%20report,of%20employment%20or%20in%20connection%20with%20any%20employment>.

⁹ California Department of Public Health (CDPH), "Human Avian Influenza A(H5N1)," April 2025, accessed May 6, 2025, [https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/CDPH-Human-Avian-Influenza-A\(H5N1\)-Quicksheet-ADA.pdf](https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/CDPH-Human-Avian-Influenza-A(H5N1)-Quicksheet-ADA.pdf).

¹⁰ Office of Administrative Law, "About the Emergency Rulemaking Process," accessed June 4, 2025, https://oal.ca.gov/emergency_regulations/Emergency_Regulation_Process/.

grant in part the petition, so that revising section 5199.1 be considered by Cal/OSHA as needed.

VI. DISCUSSION

A. There Is No Substantial Evidence to Warrant an Emergency Regulation Because No Current Emergency Exists.

Pursuant to Government Code (GC) section 11342.545, a state agency may adopt emergency regulations in response to “a situation that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare[.]”¹¹ or if a statute deems a situation to be an emergency under the Administrative Procedures Act.

Any finding of emergency shall include . . . a description of the specific facts demonstrating the existence of an emergency and the need for immediate action, and demonstrating, by substantial evidence, the need for the proposed regulation to effectuate the statute being implemented, interpreted, or made specific and to address only the demonstrated emergency. The finding of emergency shall also identify each technical, theoretical, and empirical study, report, or similar document, if any, upon which the agency relies. . . . A finding of emergency based only upon expediency, convenience, best interest, general public need, or speculation, shall not be adequate to demonstrate the existence of an emergency.¹²

Cal/OSHA and Board staff evaluations both correctly point out that this standard has not been met. The Petitioner has not offered any comprehensive studies or reports that indicate an emergency situation. More importantly however since the evaluations were opined, the CDC officially ended its emergency response to the H5N1 avian flu in July 2025. The CDC has “streamlined H5N1 bird flu updates with routine influenza data updates” to indicate less heightened surveillance.¹³ The CDPH also adds that the last human case of avian flu reported was January 14, 2025, and that “[n]o person-to-person case has been detected in California.”¹⁴

Thus, due to the lack of emergency situation and the CDC position that avian flu remains a low public health risk,¹⁵ Petitioner’s request for an emergency temporary standard is moot.

¹¹ Gov. Code, § 11342.545.

¹² Gov. Code, § 11346.1(b)(2).

¹³ U.S. Centers for Disease Control and Prevention (CDC), “H5 Bird Flu: Current Situation,” accessed August 22, 2025, <https://www.cdc.gov/bird-flu/situation-summary/index.html>.

¹⁴ CDPH, “Current Bird Flu Situation,” accessed August 22, 2025, <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Bird-Flu.aspx>.

¹⁵ CDC, “Current Situation: H5N1 Bird Flu in People,” accessed August 25, 2025, <https://www.cdc.gov/bird-flu/situation-summary/inhumans.html>.

B. The Board Recognizes That Avian Flu Detection and Reinfections Remain Fluid in California.

On August 1, 2025, the CDFA issued a Livestock Health Alert stating following an investigation by the CDFA and rapid disease detection by other state and national agencies, 43 cases of H5N1 Influenza in California dairies were confirmed. Those dairies were re-quarantined by CDFA after prior release. “These are new detections on dairies that were infected previously but had their CDFA quarantine lifted after 3 negative whole herd tests via bulk milk tank samples, one week apart. These 43 farms have been shown to have sufficient virus present to be placed back under State Quarantine.”¹⁶

Additionally, at the August 21, 2025, Board Meeting, Petitioner expressed via public comment that cooler weather as fall approaches would likely increase avian flu cases.

Given the evolving nature of avian flu, the Board encourages staff to continue to monitor this situation and suggest additional solutions as needed.

C. Petitioner Adequately States Reasons for Section 5199.1 to be Amended via the Regular Rulemaking Process.

1. Clarification Is Needed to Avoid Confusion When There Is Overlap Between Standards Governing Two Distinct Situations Which Contain Some Similarities.

The Board agrees with Cal/OSHA’s assessment the overlap between subsections 5199.1 (c) and (d) can be confusing for the regulated public.

It appears from the rulemaking record the original drafters of the regulation intended “a graduated system of controls based on the level of disease hazard and type of operation.”¹⁷ Unfortunately, this system was not clearly communicated. An amendment via regular rulemaking timelines will clarify which standard applies, or if the more stringent standard applies when a situation encompasses the two subsections.

2. Requiring Employers to Exclude Infected or Exposed Workers from the Workplace Is a Rational Policy to Prevent Further Transmission of H5N1 Bird Flu in the Workplace.

The Board further agrees with Cal/OSHA that exclusion pay similar to regulations in the emergency COVID-19 standard should similarly apply to employees

¹⁶ California Department of Food and Agriculture, “August 1, 2025: H5N1 Bird Flu in Livestock Updates,” accessed August 22, 2025, https://www.cdfa.ca.gov/AHFSS/Animal_Health/HPAI.html.

¹⁷ Aerosol Transmissible Diseases - Zoonotics; August 21, 2008, rulemaking file, Memo dated May 22, 2008, [Informative Digest of Proposed Action/Policy Statement Overview](#) (PDF page 258).

infected or exposed to H5N1 avian flu in the workplace. The rationale to prevent further transmission is an important factor that cannot be overlooked.

However, the Board does not agree with Cal/OSHA's conditional exclusion of employees only when recommended by a physician or other licensed health care professional. As Petitioner explained, impacted workers are predominately lower income immigrants who may not have access to reliable medical care. While a positive identification is needed for monitoring purposes, those who are exposed but have yet to experience any symptoms risk exposing others exponentially.

Although Board staff mentions the COVID-19 exclusions, the Board is not convinced about the arguments against excluding exposed employees from the workplace. The tangent into exclusion of employees in other industries, citing the lead standard, is not a similar comparison to the situation at hand. While lead is indeed an occupational hazard, aerosol transmissible diseases stand in a category of its own based on the still novel poultry-to-cattle-to-human transmission as well as the contagious nature of avian flu. Although CDPH has categorized H5N1 as "low risk," the Board believes consideration of these elements by an advisory committee is warranted.

3. The Board Is in Support of Providing Exclusion Pay and Maintaining Job Rights and Benefits for Workers Excluded from the Workplace.

Exclusion pay and the maintenance of job rights and benefits for those excluded from the workplace were important components of an effective regulatory scheme during the emergency COVID-19 epidemic and similarly should be considered by an advisory committee here.

4. Providing Impacted Workers with Supplemental Paid Sick Leave for Missed Work Due to Testing, Vaccination or Medical Monitoring Is an Established and Reasonable Practice.

Similarly, consideration of these elements by an advisory committee is warranted.

5. Requiring Employers to Transmit Any Illness or Symptom Information Reported by Workers to the Local Health Department, CDPH and Cal/OSHA Is Redundant and Unwarranted.

The Board agrees with both Cal/OSHA and Board staff that this request is unnecessary and redundant, as discussed above.

VII. CONCLUSION AND ORDER

The Board has considered the petition of Valley Voices and other supporting organizations. The Board has also considered the recommendations of Cal/OSHA and Board staff. For reasons stated in the preceding discussion,

Petition File No. 608 is hereby DENIED as to the emergency temporary standard. Petition File No. 608 is GRANTED to the extent the Board directs staff to convene an advisory committee to undertake a review of section 5199.1. The committee's discussion and evaluation should include, but is not limited to, clarity as to subsections (c) and (d) as well as exclusion of infected or exposed employees from the workplace and considerations such as exclusion pay and maintaining job rights and benefits.