

State of California
Department of Industrial Relations
Occupational Safety and Health Standards Board

Petition File No. 608

Board Staff Evaluation
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State of California
Gavin Newsom, Governor

INTRODUCTION

Petition File No. 608 (Petition) was received from Valley Voices (Petitioner), on March 20, 2025. The Petition requests the Occupational Safety and Health Standards Board (Board) adopt an emergency temporary standard (ETS) and amend section 5199.1 “Aerosol Transmissible Diseases – Zoonotic” in title 8 of the California Code of Regulations to address avian flu in the dairy and poultry industry.

REQUESTED ACTION

The Petitioner requests the Board adopt an ETS to immediately address concerns regarding the spread of avian flu in industries subject to section 5199.1 “Aerosol Transmissible Diseases – Zoonotic.” The Petitioner also requests the Board amend section 5199.1 to clarify existing requirements and better protect workers.

PETITIONER’S ASSERTIONS

The Petitioner asserts:

- The existing aerosol transmissible disease zoonotic standard, section 5199.1, does not adequately protect all workers.
- The widespread risk of bird flu infection and transmission is an emerging public health threat to the state’s dairy and poultry workers.
- The U.S. Centers for Disease Control and Prevention (CDC) reports 70 confirmed cases of bird flu in the country as of March 19, 2025. “The California Department of Public Health (CDPH) has reported 38 cases in California . . . The virus is likely much more widespread in people than the CDC’s official numbers suggest given that the pathogen has been detected in over 700 dairy herds in California.”
- No systemic inspections or investigations of human infections have taken place at high-risk facilities, such as dairies.
- “[A] recent blood test analysis involving 115 dairy workers revealed that 7% of those tested showed signs of previous bird flu infection[.]” Veterinarians have found undetected bird flu in states where dairy herds have not tested positive.
- Employers may underestimate the necessary mitigation steps to protect workers because some cows with bird flu are asymptomatic.
- The CDC identifies work in milking parlors on farms with infected animals as posing a high risk of exposure to workers.
- “[L]ittle is being done to curb human exposure” on dairy farms.
- Although “the current bird flu strain has mostly caused relatively mild illness in humans . . . [d]ata suggests that if the virus enters the lungs directly, it can cause a severe infection.”

- “Recent scientific findings reveal that the virus has a higher likelihood of achieving pandemic potential than previously thought. A single mutation would . . . result in a potentially high mortality variant of the 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.”
- Since 2003, 950 humans outside the U.S. have been infected with bird flu, with 464 cases resulting in death, according to the World Health Organization.
- Governor Newsom declared a state of emergency in December 2024, yet human cases continue to rise.
- “Avoiding human infection and potential transmission in dairy and poultry workers is the most important first line defense to preventing a potentially devastating pandemic.”

DIVISION OF OCCUPATIONAL SAFETY AND HEALTH (Cal/OSHA) REPORT

Cal/OSHA’s evaluation, dated June 10, 2025, recommends the following with regard to the Petitioner’s requests:

1. Granting the petition to the extent that rulemaking be limited to making changes to existing section 5199.1.
2. Denying the request for an emergency temporary standard.
3. Granting the petition to clarify when subsections 5199.1(c) and (d) apply.
4. Granting the petition to add requirements to section 5199.1 for exclusion and exclusion pay for occupationally exposed or infected workers.
5. 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.

STAFF EVALUATION

“Bird flu, also known as avian influenza A (H5N1) . . ., is caused by a virus that can cause serious illness and death in birds and mammals. Human infections with bird flu viruses are rare, but they can happen when the virus gets into a person's eyes, nose, mouth, or when inhaled.”¹ Bird flu in humans can have mild symptoms ranging from eye

¹ CDPH, “Current Bird Flu Situation,” last updated June 23, 2025, accessed April 24, 2025, <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Bird-Flu.aspx>.

redness or discharge, runny or stuffy nose, or cough to more serious symptoms including difficulty breathing, fever, pneumonia, seizures or death.²

According to the CDC, “H5 bird flu is widespread in wild birds worldwide and is causing outbreaks in poultry and U.S. dairy cows with several recent human cases in U.S. dairy and poultry workers.”³ The CDC also states, “While the current public health risk is low, CDC is watching the situation carefully and working with states to monitor people with animal exposures.”⁴

The CDC maintains a website that provides a daily update (Monday-Friday) of the latest information regarding bird flu outbreaks in the country. According to the website, as of April 23, 2025, “There is no known person-to-person spread at this time” and “[t]he current public health risk is Low.”⁵ Since April 28, 2022, there have been 70 human cases, though 64 of the cases were detected as a result of targeted H5 testing that began on March 24, 2024. One nationwide death due to bird flu exposure has also been reported in Louisiana in January of 2025.⁶

Nationally, as of April 23, 2025, there have been 41 human cases of bird flu infection detected in workers associated with the dairy industry (36 from California) and 24 from workers in the poultry industry (zero from California). Additionally, five human cases nationwide have come from “other animal exposure”⁷ or “exposure source unknown.”⁸ Two of the human cases classified as “exposure source unknown” have occurred in California for a total of 38 cases.⁹ The CDPH reports that “the last human case reported in California was on **January 14, 2025**” (emphasis preserved from original).¹⁰

² Ibid.

³ CDC, “H5 Bird Flu: Current Situation,” June 20, 2025, accessed April 24, 2025, <https://www.cdc.gov/bird-flu/situation-summary/index.html>. “Several recent A(H5) cases have been reported in the U.S. The CDC has been unable to isolate the virus from the recent human cases. As a result, CDC has been unable to determine the virus's neuraminidase subtype or whether it is likely an N1.” CDC, “Past Reported Global Human Cases with Highly Pathogenic Avian Influenza A (H5N1) (HPAI H5N1) by Country, 1997-2025,” June 13, 2025, <https://www.cdc.gov/bird-flu/php/avian-flu-summary/chart-epi-curve-ah5n1.html>.

⁴ CDC, “H5 Bird Flu: Current Situation.”

⁵ Ibid.

⁶ Ibid. A follow up check on these data indicate they are unchanged as of May 6, 2025 (i.e., no new cases or deaths reported to CDC).

⁷ “Exposure was related to other animals such as backyard flocks, wild birds, or other mammals.” Two instances nationwide. CDC, “H5 Bird Flu: Current Situation.”

⁸ Exposure source was not able to be identified. Three instances nationwide. CDC, “H5 Bird Flu: Current Situation.”

⁹ CDPH, “Current Bird Flu Situation.”

¹⁰ Ibid. Accessed May 7, 2025.

On December 18, 2024, Governor Newsom issued a State of Emergency declaration to reduce the spread of bird flu in California.¹¹ The California Department of Food and Agriculture (CDFA) has banned the exhibition of poultry and dairy cattle at fairs and shows in California and quarantined hundreds of dairies.¹² Public health leaders have provided personal protective equipment (PPE) to dairy farms and workers and provided symptomatic individuals with access to testing, treatment and seasonal flu vaccines to aid in preventing the spread of the virus.¹³

Relevant Standards

Federal Standards

Federal OSHA regulations do not specifically address employee exposure to bird flu. Generally applicable standards that apply to controlling employee exposures to the virus include OSHA's PPE standards (29 C.F.R. part 1910 subpart I), which require gloves, eye and face protection and respiratory protection. The General Duty Clause, which requires employers to furnish employees a workplace free from recognized hazards that cause or are likely to cause death or serious physical harm, applies to the presence of bird flu in the workplace. Requirements from hazard communication (29 C.F.R. § 1910.1200) could also apply if employees are exposed to chemicals used for disinfection or cleaning of surfaces.

California Standards

Section 5199.1 "Aerosol Transmissible Diseases – Zoonotic" applies to farms, slaughterhouses and other workplaces where zoonotic pathogens can be present. The regulation has a basic requirement for employers to "establish, implement, and maintain effective procedures for preventing employee exposure to zoonotic aerosol transmissible pathogens in accordance with Section 3203 of these orders."¹⁴ The regulation requires procedures for injury and illness investigations, training, biosecurity and PPE where applicable.

In addition to section 5199.1, title 8 contains other regulations which can be used to protect employees and prevent the spread of bird flu, including section 3380 "Personal Protective Devices," which requires employers to assess the workplace for likely hazards and require employees to use PPE that will protect them from such hazards. Sections 3203 "Injury and Illness Prevention Program," 5144 "Respiratory Protection,"

¹¹ Governor Gavin Newsom, "Governor Newsom Takes Proactive Action to Strengthen Robust State Response to Bird Flu," news release, December 18, 2024, <https://www.gov.ca.gov/2024/12/18/governor-newsom-takes-proactive-action-to-strengthen-robust-state-response-to-bird-flu/>.

¹² CFDA, "H5N1 Bird Flu Virus in Livestock," accessed April 24, 2025, https://www.cdfa.ca.gov/AHFSS/Animal_Health/HPAI.html.

¹³ CDPH, "Current Bird Flu Situation." Updated April 22, 2025, accessed April 24, 2025.

¹⁴ Cal. Code Regs., tit. 8, § 5199.1, subd. (a)((2)(A).

5194 “Hazard Communication” and 5199 “Aerosol Transmissible Diseases” are also applicable.

Finally, title 8, section 342 requires employers to immediately report serious workplace illnesses, injuries and deaths to Cal/OSHA.

Consensus and Other Standards

The CDC, CDPH, CDFA, academia and other public and private organizations provide numerous resources to protect employees from exposure to and prevent the spread of bird flu. Additionally, title 17, section 2500 of the California Code of Regulations requires health care providers to report cases of listed diseases and conditions to local health officers within specified timeframes.

Staff Analysis

Although the CDC and CDPH state that the public health risk from bird flu is low, some scientists fear that the frequent mutations of the virus could lead to more serious impacts on public health.^{15,16} As a proactive measure, Petitioner requests that an ETS be developed and the existing permanent standard be amended to address the following:

- 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.”*

Specifically, Petitioner is concerned that subsections 5199.1(c) and (d) have “different definitions for ‘restricted areas,’ and differ in their requirements for notice, use of personal protective equipment, and provision of medical services.”

- 2) *“To limit transmission of H5N1 in the workplace, require employers to keep infected or exposed workers from the workplace until it is safe for them to return to work.”*

Petitioner requests that exposed or infected workers be required to be excluded from the workplace. Petitioner references CDC recommendations to monitor workers for symptoms of bird flu for 10 days after their last exposure to confirmed or potentially infected animals, byproducts or surfaces.

¹⁵ Bill Whitaker, “Bird Flu, Feared as a Possible Pandemic, Poses Growing Risk to People as Pathogen Spreads, Scientists Warn,” *CBS News*, April 20, 2025, accessed April 28, 2025, <https://www.cbsnews.com/news/bird-flu-risk-as-pathogen-spreads-60-minutes-transcript/>.

¹⁶ Susanne Rust, “USDA Says It Will Start Testing Milk for H5N1 Bird Flu Virus Nationwide,” *Los Angeles Times*, December 6, 2024, accessed April 28, 2025, <https://www.latimes.com/environment/story/2024-12-06/usda-says-it-will-start-testing-milk-for-h5n1-nationwide>.

- 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.”*

Petitioner points out that “[m]ost dairy farm workers are Latino, immigrant, and undocumented[.]” meaning “[t]hey have limited access to an economic safety net[.]” Petitioner asserts that regulations should require workers with confirmed or suspected infection be quarantined with exclusion pay until symptoms resolve, as recommended by CDC guidelines, because existing standards on workers compensation and sick leave do not incentivize worker isolation.

- 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 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.”*

Petitioner points out that the existing regulation requires employers to provide medical services, which include surveillance, vaccinations and prophylaxis, but does not specify who should bear the costs for the time to receive the services. Petitioner requests amendments to clarify that workers be compensated for all time taken to receive such services.

- 5) *“Require employers to transmit any illness or symptom information reported by their workers to the local health department, CDPH and Cal/OSHA.”*

Petitioner states that section 5199.1(e) requires medical records be provided upon request to Cal/OSHA inspectors and other regulators. Petitioner also states that section 342 requires reporting of serious injuries and fatalities to Cal/OSHA, but that neither standard’s reporting requirements provide the comprehensive reporting structure necessary to control the spread of bird flu. Petitioner requests that section 5199.1 be amended to require employers to transmit suspected worker infection data to “relevant health agencies[.]”

- 6) *With respect to the ETS, Petitioner states that time is of the essence and that the ETS “must be issued as soon as possible” to protect employees who may be exposed to bird flu and to prevent the mutation and possible spread of bird flu to a wider population.*

Petitioner also asserts that the requirements in Labor Code section 144.6 require the Board to adopt a standard that “most adequately assures, to the extent

feasible, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to a hazard . . . for the period of his working life.”¹⁷

Response to Request 1

With regard to the Petitioner’s first request, Board staff agree 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. 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 PPE and procedures for the safe disposal or laundering of the PPE.

Additionally, 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 do not see any 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.

Cal/OSHA has the authority to revise section 5199.1 if needed.

Response to Requests 2-4

Requests 2-4 deal with the exclusion of employees infected with or exposed to the bird flu virus. 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,¹⁸ though the requirement was removed from later versions of the emergency and permanent regulation.¹⁹

Section 5198 “Lead” also has provisions for medically removing an employee from a hazardous exposure with pay for up to 18 months.²⁰ Other regulations with medical removal provisions include sections 5202 (methylene chloride), 5204 (respirable

¹⁷ Lab. Code, § 144.6.

¹⁸ 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.

¹⁹ 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>.

²⁰ Cal. Code Regs., tit. 8, § 5198. <https://www.dir.ca.gov/Title8/5198.html>. See subsection 5198(k) “Medical Removal Protection” for specifics.

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.

As of January 1, 2025, all California employers are required to provide five days or 40 hours of paid sick leave to employees.²¹ Board staff note 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.”²² Staff do not feel 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.”²³

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 acknowledge the logic of these concerns but assert requiring exclusion pay as requested by the Petitioner doesn’t meet the same threshold as “Lead.”

However, as previously stated, Cal/OSHA has the authority to revise section 5199.1 if needed.

Response to Request 5

Petitioners 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

²¹ 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.

²² OSHSB, “Occupational Safety & Health Standards Board (OSHSB),” accessed May 6, 2025, <https://www.dir.ca.gov/oshsb/>.

²³ 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>.

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.²⁴ The Petitioners are 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.”²⁵

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 envision 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.

Cal/OSHA currently receives injury and illness reports for serious cases and fatalities. Additionally, CDPH can refer health cases to Cal/OSHA for inspection when deemed necessary. Board staff do not recommend that the reporting requirements be modified as requested.

Response to Request 6

Petitioner requests their Petition be enacted in an expedited manner as an ETS. The Office of Administrative Law (OAL) provides the following information regarding the emergency rulemaking process²⁶ that staff find relevant in the present situation:

²⁴ 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>.

²⁵ 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).

²⁶ OAL, “About the Emergency Rulemaking Process,” accessed June 4, 2025, https://oal.ca.gov/emergency_regulations/Emergency_Regulation_Process/.

- 1) “The emergency rulemaking process generally includes a brief public notice period, a brief public comment period, review by OAL and an OAL decision.”
- 2) “In order for an emergency regulation to be approved, an emergency situation must be shown to exist.”
- 3) “A finding of emergency based only upon expediency, convenience, best interest, general public need, or speculation, is not adequate to demonstrate the existence of an emergency. (Government Code section 11346.1(b)(2).)”

Although bird flu holds the potential to become a serious threat to human health, the current CDPH and CDC concern level of “low” does not support the showing of an emergency situation required for the creation of an ETS. As stated in the Governor’s Emergency Action, “While the risk to the public remains low, [California] will continue to take all necessary steps to prevent the spread of this virus.”²⁷

Conclusion

Board staff recommend against implementing any updates to section 5199.1 through the emergency rulemaking process. Staff point to the current public health risk rating of the CDC and CDPH as “low” to support this request. Additionally, as of the date of this evaluation, the last reported California case of bird flu by the CDPH occurred on January 14, 2025.

Cal/OSHA has the authority and responsibility to enforce title 8 regulations, including section 5199.1. Board staff suggest that the Petition be granted to the extent that Cal/OSHA is requested to consider the Petitioner’s concerns as they relate to the need to amend section 5199.1. Such amendments should proceed on a timeline convenient to Cal/OSHA, taking into consideration their current priorities and rulemaking load. Board staff recommend they do so using a representative advisory committee made up of various stakeholders, including the Petitioner.

STAFF RECOMMENDATION

Consistent with the foregoing discussion, Board staff recommend that Petition File No. 608 be denied with regard to proceeding via the emergency rulemaking process. Staff also recommend the Board grant in part the Petition, so that revising section 5199.1 be considered by Cal/OSHA as they see the need.

²⁷ Governor Gavin Newsom, “Governor Newsom Takes Proactive Action to Strengthen Robust State Response to Bird Flu,” December 18, 2024, accessed June 4, 2025, <https://www.gov.ca.gov/2024/12/18/governor-newsom-takes-proactive-action-to-strengthen-robust-state-response-to-bird-flu/>.