

March 20, 2025

Occupational Safety and Health Standards Board
2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833
oshsb@dir.ca.gov
Attention: Executive Officer, Millicent Barajas

Re: Petition for an amendment to Title 8 standards to protect workers from zoonotic Aerosolized Transmissible Diseases such as the H5N1 avian influenza (bird flu) virus

Dear Members of the OSH Standards Board:

On behalf of workers not adequately protected by the Aerosolized Transmissible Disease (ATD) - Zoonotic standard, 8 CCR § 5199.1, and in consultation with labor and community organizations throughout California, this petition to amend Title 8 standards is submitted by Valley Voices and the undersigned organizations. We are seeking regulatory clarity and protection for those currently working at establishments at increased risk of zoonotic ATD infections, including those who work at dairies and operations involving handling, culling, transporting, killing, eradicating, or disposing of animals infected with zoonotic ATDs, or the cleaning and disinfection of areas used, or previously used, to contain such animals or their wastes.

Valley Voices is a 501(c)(3) nonprofit founded in 2019 that advocates for worker rights and promotes socioeconomic, health equity, and civic participation. It serves the underserved and overlooked communities in Kings, Fresno, and Tulare counties, where bird flu cases are most prevalent. Valley Voices conducts outreach throughout the tri-county area and provides education and information on the bird flu and other relevant health concerns so that workers and residents can better protect themselves.

This petition is being submitted against the backdrop of an emerging public health threat to the state's dairy and poultry workers due to the widespread risk of bird flu infection and transmission. As of March 19, 2025, the U.S. Center for Disease Control and Prevention (CDC) confirmed 70 reported human cases of bird flu in the United States.¹ 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 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, there has been no systemic inspections or investigations of human infections

¹ <https://www.cdc.gov/bird-flu/situation-summary/index.html>

² <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Bird-Flu.aspx>

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,³ and blood samples from veterinarians found undetected bird flu, including in states where dairy herds have not tested positive.⁴ The United States Department of Agriculture (USDA) reports asymptomatic cows have tested positive for bird flu, meaning that the state and employers may underestimate the mitigation necessary to protect workers from infection.⁵

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.⁶ 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. Although authorities have been urging dairy farms and workers to take precautions against spreading infection, little is being done to curb human exposure.⁷

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.⁸

Experts warn that nearly all the conditions needed for the virus to develop a threatening mutation are now present in many dairy farms: lax testing protocols; close, unprotected contact between humans and animals; a general failure to take the threat seriously; and the simultaneous threat of other human influenza viruses.⁹ If a virus, such as the H5N1 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 transmit between organisms and cause severe disease.

Recent scientific findings reveal that the virus has a higher likelihood of achieving pandemic potential than previously thought. A single mutation would allow the virus to bind more effectively to receptors in human airways, resulting in a potentially high mortality variant of the

³ <https://www.cdc.gov/mmwr/volumes/73/wr/pdfs/mm7344a3-H.pdf>

⁴ https://www.cdc.gov/mmwr/volumes/74/wr/mm7404a2.htm?s_cid=mm7404a2_w

⁵ <https://www.usda.gov/about-usda/news/press-releases/2024/04/24/usda-actions-protect-livestock-health-highly-pathogenic-h5n1-avian-influenza>

⁶ <https://www.cdc.gov/bird-flu/prevention/farm-workers.html>

⁷ https://clc.ucmerced.edu/sites/clc.ucmerced.edu/files/page/documents/dairy_worker_brief_final_5.pdf

⁸ <https://doi.org/10.1038/s41586-025-08609-8>

⁹ <https://www.latimes.com/environment/story/2024-12-06/usda-says-it-will-start-testing-milk-for-h5n1-nationwide>

disease. In January, officials detected a new strain of bird flu, H5N9, in Merced County.¹⁰ New variants of H5N1 have been detected in Nevada last month, infecting both cattle and a dairy worker.¹¹ Genomic sequencing of the Nevada case revealed a mutation that has been associated in the past with more effective spread among people.

The bird flu's continued spread is occurring at the same time as an unprecedented flu season. This spike in seasonal flu has put pressure on the health care systems in California, making it harder to detect rare variants such as H5N1, and raises the risk of reassortment—common in influenza cases—where a seasonal flu virus and an H5N1 virus trade genetic material within a person or animal to create a new, more contagious and virulent variant.

The increasing likelihood of a mutation that allows the virus to be more easily transmitted between humans presents a serious threat to all Californians. 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 bird flu outside the U.S. with 464 cases resulting in death, representing a close to 50 percent mortality rate.¹²

California, as the state most impacted by H5N1 bird flu, must do everything feasible to reduce the number of opportunities for the virus to mutate and “flatten the curve” of infections in humans and animals. In December, Governor Newsom proclaimed a state of emergency in response to dozens of human cases of bird flu.¹³ Human cases continue to rise despite the declaration. Avoiding human infection and potential transmission in dairy and poultry workers is the most important first line defense to preventing a potentially devastating pandemic. To better protect at-risk workers and prevent the spread and possible mutation of aerosolized zoonotic transmissible diseases, petitioners request the adoption of the following as emergency temporary standards and permanent additions and modifications to 8 CCR § 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.

Subsection (c) of the ADT Zoonotic standard applies “[w]hen 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 “[e]very employer with work operations involving handling, culling, transporting, killing,

¹⁰ <https://wahis.woah.org/#/in-review/6201>

¹¹ <https://www.aphis.usda.gov/news/program-update/aphis-confirms-d11-genotype-dairy-cattle-nevada-0>

¹² https://cdn.who.int/media/docs/default-source/wpro---documents/emergency/surveillance/avian-influenza/ai_20250131.pdf?sfvrsn=5f006f99_149

¹³ <https://www.gov.ca.gov/wp-content/uploads/2024/12/CORRECT-ATTESTED.pdf>

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.” Currently, many dairy operations meet both criteria. For example, the United States Department of Agriculture (USDA) issued a movement restriction for all lactating cattle in April 2024, thereby subjecting all dairies in California to subsection (c). Meanwhile, since California’s first detection of H5N1 bird flu in dairies, there have been a total of 744 infected dairies, meaning that over 70 percent of California’s dairies would simultaneously be subject to subsection (d). However, the two standards use different definitions for “restricted areas,” and differ in their requirements for notice, use of personal protective equipment, and provision of medical services.

Subsection (c) defines restricted areas as “areas in which occupational exposure to potentially infectious animals may occur,” and requires the posting of signs identifying the area as restricted in all necessary languages, and establishes supervision, training, record-keeping, and PPE requirements to protect workers entering those areas. Subsection (d) defines restricted areas as “areas consisting of contaminated zones and contaminant reduction zones,” and includes a broader array of worker protections. This lack of clarity and consistency creates confusion on which standards apply and makes it difficult for operations to simultaneously meet both standards. The regulation should be revised to ensure consistency between its subsections and clarify that the more stringent standards apply when both subsections are applicable.

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.

The CDC advises that workers should monitor for any new symptoms of illness while working with confirmed or potentially infected animals, byproducts, or surfaces and during the 10 days after their last exposure; that workers should stay home and stay away from others as much as possible until they know whether they have H5N1 bird flu; and that any worker with bird flu should stay home and away from others until symptoms resolve.¹⁴ OSHA also recommends that workers with symptoms stay at home except to get medical attention.¹⁵ However, current regulations do not require the exclusion of exposed or infected workers from the workplace. Without exclusion standards in place, exposed or infected workers that are present in the workplace will increase the risk of bird flu transmission, mutation, and spread.

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,

¹⁴ <https://www.cdc.gov/bird-flu/media/pdfs/2024/09/H5-What-to-do-if-you-feel-sick-09192024-FINAL-CLEAN.pdf>

¹⁵ https://www.osha.gov/sites/default/files/publications/OSHA_FS-4189.pdf

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.

Most dairy farm workers are Latino, immigrant, and undocumented with low wages.¹⁶ They have limited access to an economic safety net—resources that help low-income workers to maintain a minimum standard of living amid hardships. The Central Valley has California's highest rates of workers living below a living wage and its largest households—two key factors associated with elevated rates of illness and death during the COVID-19 pandemic.¹⁷ These factors present significant barriers to employee reporting of exposures and symptoms due to the significant hardship posed by the possibility of missing work.

To encourage employee reporting of potential exposure and infection, employers should provide resources to workers that follow CDC guidelines and isolate in the period after exposure and infection. Exclusion pay will allow workers to isolate and avoid infecting others while maintaining the ability to support themselves and their families during work induced illness.

As was the case during the Covid-19 pandemic, existing standards on worker's compensation and sick leave are inadequate to incentivize worker isolation. Given the significant risks of bird flu mutation and spread, regulations should require workers with confirmed or suspected infection to be quarantined with exclusion pay until symptoms resolve.

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.

The regulation requires that employers provide medical services, including surveillance, vaccinations, and prophylaxis recommended by the CDC, CDPH or local health officer for exposed employees. The regulation is silent on who should bear the costs for the time taken to receive such medical services. The regulations should be updated to clarify that workers should be compensated for any time taken to receive required medical services.

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

Section 5199.1(e) requires that employee medical records required by the section be provided *upon request* for examination to the Chief, NIOSH, and the local health officer. Section 342

¹⁶ <https://www.ers.usda.gov/topics/farm-economy/farm-labor>

¹⁷ https://clc.ucmerced.edu/sites/clc.ucmerced.edu/files/page/documents/harvesting_safety_study.pdf

requires that employers report work-connected worker fatalities and serious injury or illness to Cal/OSHA. Neither standard adequately covers the need for comprehensive reporting and tracking of H5N1 infections in workers given the significant risk of bird flu spread. Health agencies have incomplete information on human infection rates and H5N1 testing rates in humans are low. U.S. Centers for Disease Control and Prevention and state and local health departments have collectively tested only around 860 people across the country after exposure to infected animals.¹⁸ To better track, assess, and mitigate H5N1 risk, health agencies must have better access to information on human exposure and infection.

Section 5199.1 puts the onerous on the local health department, CDPH and Cal/OSHA to request information. The standard only applies to records collected if an employee receives a medical evaluation and would not apply to self-reported symptoms or illness. Section 342 only requires reporting for serious illness. Current H5N1 infection symptoms are often relatively minor and therefore would not be reported pursuant to Section 342. Given the scale and risk of H5N1 spread, employers should be required to transmit data to the relevant health agencies on any suspected worker infection.

With respect to the request for an emergency temporary standard to protect employees in any operation or establishment who may be exposed to the H5N1 virus, time is of the essence. An emergency temporary standard is necessary for the immediate protection of the public peace, health, or safety within the meaning of Article IV of the California Constitution and as such, must be issued as soon as possible and take immediate effect. Emergency standards will protect employees who in the course of their employment may be exposed to or infected with H5N1 avian influenza, a potentially dangerous infectious pathogen, but also prevent mutation and potential spread to the wider population.

With respect to the request for a permanent standard to protect workers from infectious diseases including novel pathogens, this petition is submitted pursuant to Labor Code Section 142.2. Petitioners also reference Labor Code Section 142.3(c) which requires standards to include monitoring or measuring employee exposure at such locations and intervals and in a manner as may be necessary for the protection of employees. In addition, where appropriate, the occupational safety or health standard or order shall prescribe the type and frequency of medical examinations or other tests which shall be made available, by the employer or at his or her cost, to employees exposed to such hazards to most effectively determine whether the health of such employee is adversely affected by this exposure.

With respect to the request for both the emergency regulation to protect workers from H5N1 avian influenza and the permanent regulation to protect workers from infectious diseases, Labor Code Section 144.6 requires that in promulgating standards dealing with toxic

¹⁸ <https://www.cdc.gov/bird-flu/situation-summary/index.html>

materials or harmful physical agents, which applies to avian influenza and other zoonotic infectious diseases:

the board shall adopt that standard which 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 regulated by such standard for the period of his working life. Development of standards under this section shall be based upon research, demonstrations, experiments, and such other information as may be appropriate. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the reasonableness of the standards, and experience gained under this and other health and safety laws. Whenever practicable, the standard promulgated shall be expressed in terms of objective criteria and of the performance desired.

We respectfully ask the Board to consider the enclosed draft of an emergency temporary standard as guidance. We hope this draft will be of assistance in moving forward with the temporary standard with all deliberate speed given the ongoing spread of H5N1 impacting the state's workers, employers, and economy. Other novel pathogens may threaten this state and the world in the future. Additional clarity and health-protective measures are necessary to protect the lives and health of workers and their families in the face of this public health emergency.

Thank you in advance for your prompt attention to our request for an emergency temporary standard, and for a timely response to our request for a permanent standard to protect workers from zoonotic ATDs including novel pathogens. We look forward to continuing to work with the Board on this matter to protect the health and safety of all Californians and prevent the spread of bird flu and other zoonotic ATDs in anticipation of future pandemics.

Sincerely,

Valley Voices



Supporters:

California Coalition for Worker
Power



California Immigrant Policy Center



California Nurses
Association/National Nurses United



Centro Binacional para el Desarrollo
Indígena Oaxaqueño (CBDIO)



East Bay Sanctuary Covenant



Employee Rights Center



Hijas Del Campo



Lideres Campesinas



Mixteco/Indigena Community
Organizing Project (MICOP)



National Union of Healthcare
Workers



Southern California Coalition for
Occupational Safety and Health
(SoCalCOSH)



The Way Resource Center



UFCW Western States Council



Universidad Popular



Worksafe



(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.