



PennState Law

Center for Agricultural and Shale Law



Presented in partnership with
The National Agricultural Law Center

NALC WEBINAR SERIES

HPAI in Poultry and Cattle: How Can We Miss You If You Won't Go Away?

July 17, 2024, Noon EDT



Presenter:

Brook Duer

*Penn State Center for
Agricultural & Shale Law*





Brook Duer

Staff Attorney

Center for Agricultural and Shale Law

Penn State Law

329 Innovation Boulevard, Suite 118

University Park, PA 16802

(814) 863-3396

dhd5103@psu.edu



- 18 years in private practice in Lancaster County, Pennsylvania
- 12 years at the Pennsylvania Department of Agriculture (8 years as Chief Counsel)
- Penn State Ag Law Center since 2019.



PENN STATE CENTER FOR AGRICULTURAL AND SHALE LAW

329 Innovation Blvd., Suite 118
University Park, PA 16802
Phone: 814-865-4290
Website: AgLaw.psu.edu

PROFESSIONAL STAFF

Center Director

Ross H. Pifer
rpifer@psu.edu

Staff Attorney

Brook Duer
dhd5103@psu.edu

Staff Attorney

Audry Thompson
aet17@psu.edu

Staff Attorney

Jackie Schweichler
jks251@psu.edu

Research Specialist

Chloe Marie, LL.M.
cjm445@psu.edu

CENTER MISSION AND BACKGROUND

The Center for Agricultural and Shale Law conducts research and educational programs to serve a wide variety of stakeholders including agricultural producers, landowners, mineral interest and royalty owners, business professionals, judges, attorneys, legislators, government officials, community groups, and the general public. Center programs are funded in part by the Commonwealth of Pennsylvania through the Pennsylvania Department of Agriculture. The Center for Agricultural and Shale Law is a partner of the National Agricultural Law Center (NALC) at the University of Arkansas System Division of Agriculture, which serves as the nation’s leading source of agricultural and food law research and information.

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June 26, 2024

Agricultural Law Weekly Review—June 26, 2024

This Friday! June 28, 2024: [Understanding the Basics of the Clean Water Act & Agriculture](#)

National Agriculture Policy: Federal Court Enjoins USDA's 'Socially Disadvantaged Farmers' Consideration 🌱

On June 7, 2024, the U.S. District Court for the Northern District of Texas published a [memorandum opinion and order](#) enjoining the U.S. Department of Agriculture (USDA) from providing financial relief to farmers “based on its ‘socially disadvantaged farmer or rancher’ designation” under the [2022 Emergency Relief Program](#) (2022 ERP). *Strickland v. USDA*, No. 2:24-cv-00060. USDA “defines socially disadvantaged farmers and ranchers (SDFRs) as those belonging to groups that have been subject to racial or ethnic prejudice.” USDA considers the following groups of farmers to be SDFRs: American Indian or Alaska Native, Asian or Pacific Islander, Black or African American, Hispanic or Latino. For the 2022 ERP, USDA also considers women to be SDFRs. The [complaint](#), filed on March 29, 2024, by a group of white Texas farmers, argued that USDA’s consideration of race and gender was unconstitutional and unlawful, and that “through the programs, USDA acted unilaterally to enshrine into law race and sex classifications that divide American farmers, and which are unmoored from any interest that the government may have in remedying specific, identified instances of past discriminations.” The court held that the USDA can “continue to apply progressive factoring on future relief applications, so long as [it] is done independently of any race- or sex-based considerations.” *For background, see [ALWR—Feb. 13, 2024](#), “ERS Publishes Report on Socially Disadvantaged, Women, and Limited Resource Producers.”*

Food Safety: FDA Publishes Proposed Rule to Exempt Grade ‘A’ Cottage Cheese from Food Traceability Rule

On June 17, 2024, the U.S. Food and Drug Administration (FDA) published in the Federal Register a proposed rule ([89 FR 51281](#)) to exempt [Interstate Milk Shippers](#) (IMS)-listed Grade “A” cottage cheese from [Food Traceability Rule](#) requirements. Also [announced](#) by FDA, the agency states that it is proposing the exemption “because of the specific

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NALC WEBINAR SERIES

HPAI in Poultry and Cattle: How Can We Miss You If You Won't Go Away?





Agenda

No more levity from here on. (*Thanks, [Dan Hicks & His Hot Licks.](#)*)

- Overview of outbreak in the U.S.
- Examination of Legal Authorities for USDA-APHIS disease control tools re: HPAI.
- Discussion of the differences between tools used to control HPAI in poultry vs. dairy cattle.

Note: Simply not enough time to cover what the CDC is doing re: human health, nor what individual states are doing using their own legal authority and tools to attempt to control HPAI in poultry and dairy cattle in their states (which is a lot!)



Overview of U.S. HPAI Outbreak

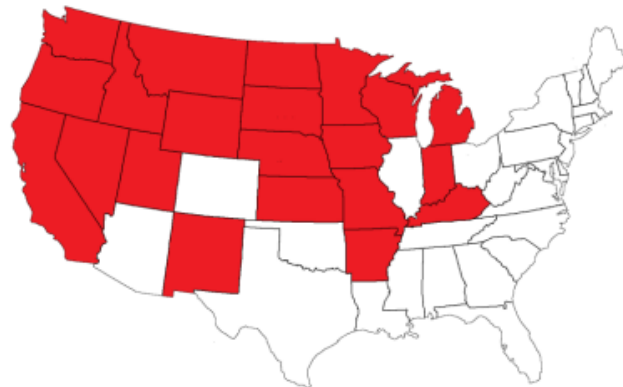




Prior HPAI Outbreak in Poultry 2014-2015

The hardest hit states were Minnesota (over 100 affected premises) and Iowa (over 70 affected premises); South Dakota, Wisconsin, Nebraska, California, Missouri, North Dakota, and Arkansas also had one or more detections of HPAI in commercial flocks.

- In total, 21 States have had HPAI detections in commercial premises, backyard flocks, captive wild birds and/or wild birds.



Approximately 50.5 million commercial birds were depopulated or succumbed to the virus (primarily layers and turkeys).





Current U.S. HPAI Outbreak - 1st detection Feb. 2022

- USDA APHIS' Detections of Highly Pathogenic Avian Influenza



Confirmations in Commercial and Backyard Flocks



Detections in Wild Birds



Detections in Mammals



Detections in Livestock

The U.S. Department of Agriculture, Food and Drug Administration, Centers for Disease Control and Prevention, and State veterinary and public health officials are investigating cases of highly pathogenic avian influenza (HPAI) in dairy cows.





H5N1 subtype of Influenza A (as opposed to B, C and D)

About Avian Influenza

Avian influenza is caused by influenza Type A virus (influenza A). Avian-origin influenza viruses are broadly categorized based on a combination of two groups of proteins on the surface of the influenza A virus: hemagglutinin or “H” proteins, of which there are 16 (H1–H16), and neuraminidase or “N” proteins, of which there are 9 (N1–N9). Many different combinations of “H” and “N” proteins are possible. Each combination is considered a different subtype, and related viruses within a subtype may be referred to as a lineage. Avian influenza viruses are classified as either “low pathogenic” or “highly pathogenic” based on their genetic features and the severity of the disease they cause in poultry. Most viruses are of low pathogenicity, meaning they cause no signs or only minor clinical signs of infection in poultry.

Six main hemagglutinin (HA) subtypes of bird flu viruses have infected people to cause acute respiratory illness (H3, H5, H6, H7, H9, and H10 viruses). Among these, H5N1 and H7N9 viruses have caused the majority of infections in people.

Humans

Total Reported Human Cases in the United States: **5** (since 2022)

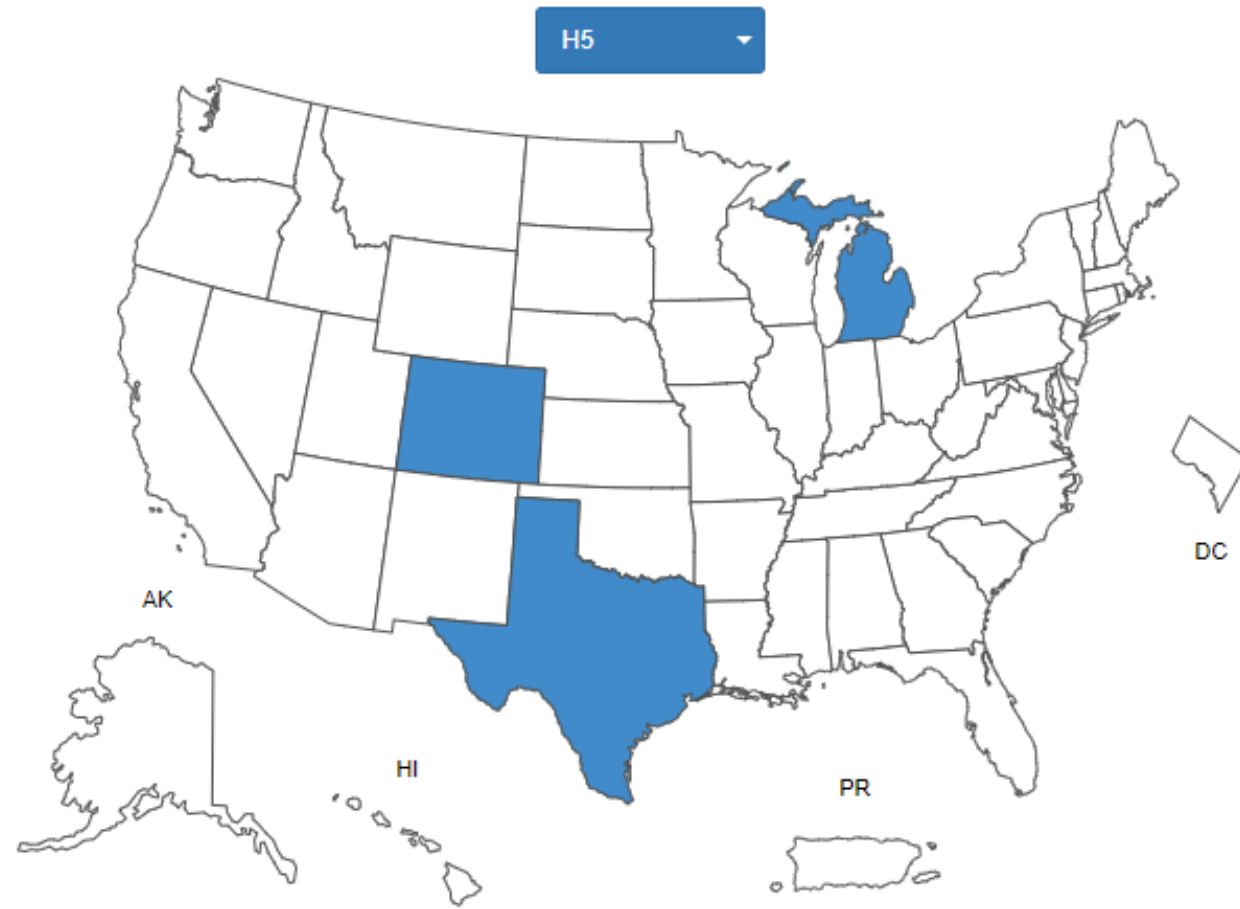
4 following exposure to dairy cows (reported between 4/01/2024 and 7/3/2024 | [Full Report](#))

1 following exposure to poultry (reported on 4/28/2022) | [Full Report](#)

States with Reported Case(s): **3**

Source: [CDC](#)

Novel Influenza A Virus Infections



Map Legend

0 cases 1 - 5 cases 6 - 10 cases > 10 cases

By Season Aggregate All Selected



5 New poultry-to-human cases – as of 7/14/24

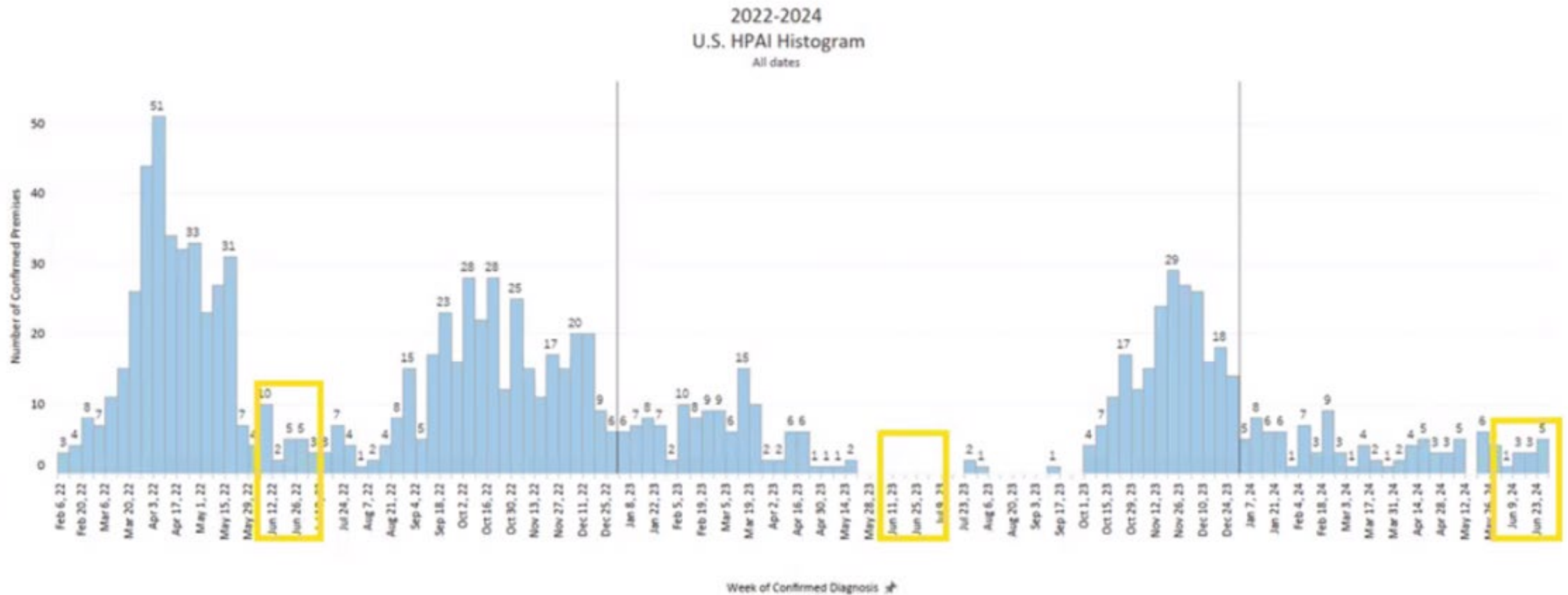
Colorado state health officials identify possible cases of avian flu in Colorado poultry workers -

Denver (July 12, 2024) — The Colorado Department of Public Health and Environment, in coordination with the Colorado Department of Agriculture and State Emergency Operations Center, has identified **three** presumptive positive cases of avian influenza in workers responding to the avian flu outbreak at a commercial egg layer operation. . . The workers were culling poultry at a farm in northeast Colorado and exhibited mild symptoms, including conjunctivitis (pink eye) and common respiratory infection symptoms. None of the individuals were hospitalized.

Health officials confirm human cases of avian flu in Colorado poultry workers Denver (July 14, 2024) - In coordination with the Colorado Department of Agriculture, the State Emergency Operations Center, and Centers for Disease Control and Prevention, the Colorado Department of Public Health and Environment is now reporting a total of **five human cases of avian influenza in workers responding to the avian flu outbreak at a commercial egg layer operation**. CDC has confirmed four of the cases, and one additional case is presumptive positive and pending confirmation at CDC.



HPAI Domestic Poultry – US Histogram, 2022 - 2024





HPAI 2022/2023 Confirmed Detections

as of July 12, 2024

Last reported detection Tuesday, July 9, 2024

Data updated weekdays by 12pm Eastern

[Download Data](#)

Outbreak Situation Last 30 Days

13 Confirmed Flocks

Flocks tested and confirmed having HPAI

Commercial Flocks

10

Backyard Flocks

3

Birds Affected*

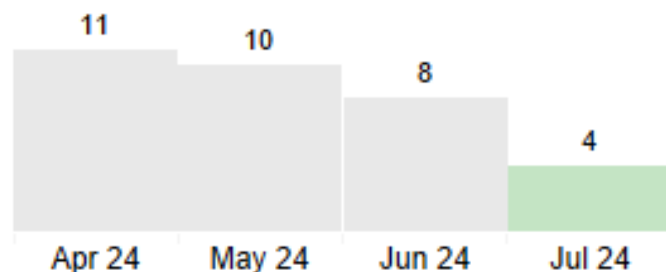
2.19M

*Number of birds on confirmed infected premises.

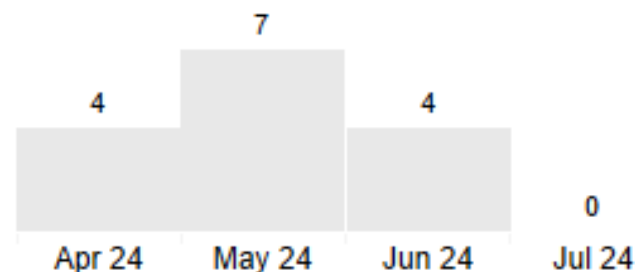
Detections by Month

Bars reflect most recent 4 months.

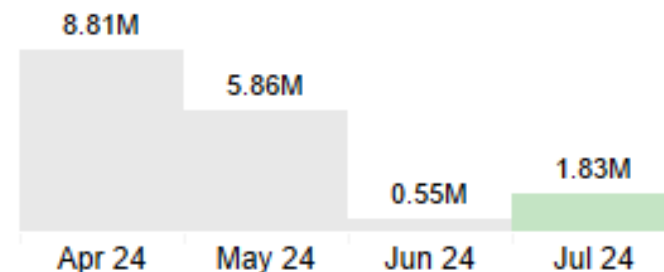
Commercial Flocks



Backyard Flocks



Birds Affected*



Choose variable

Choose time period

Birds Affected

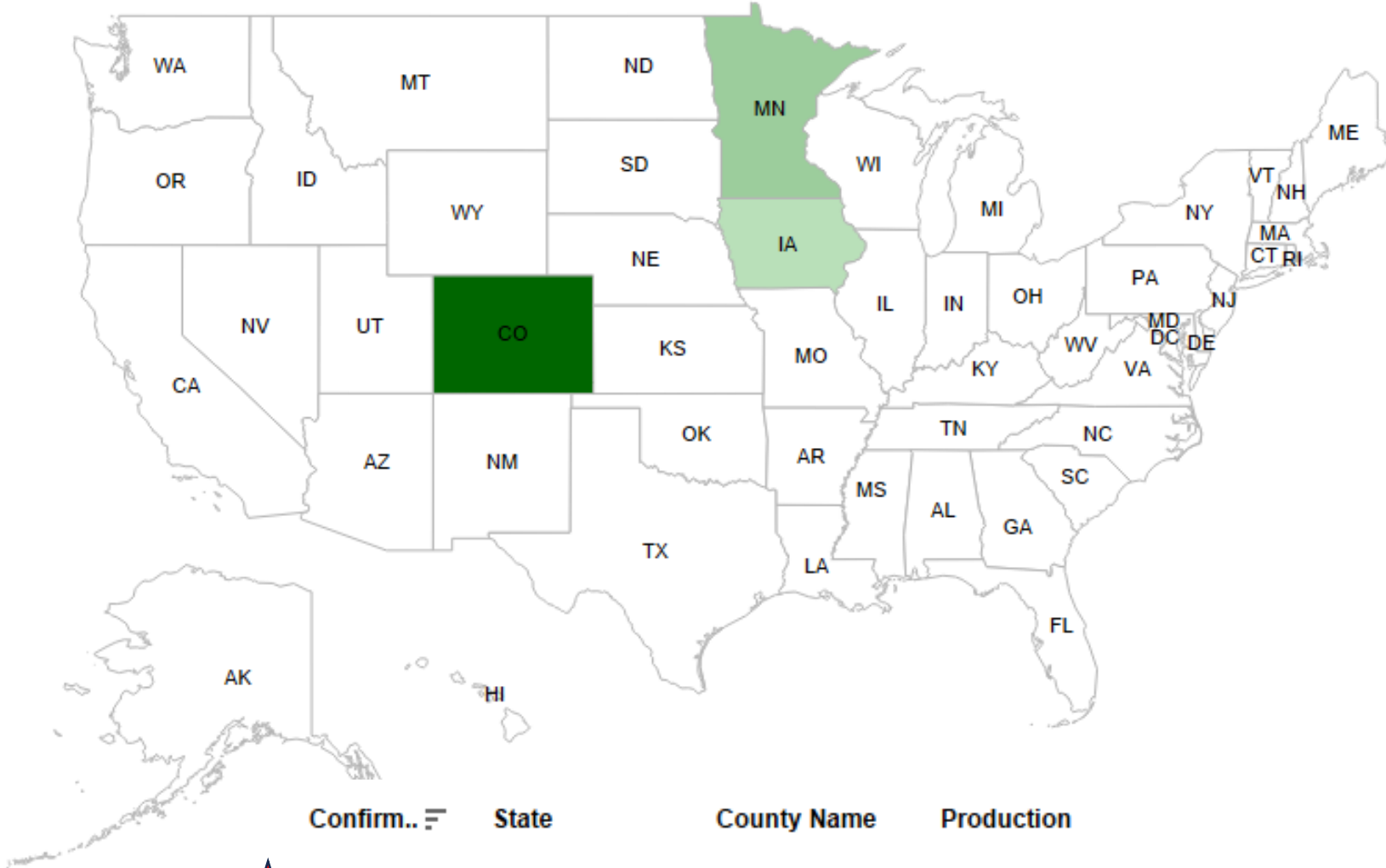
Last 30 Days

Birds Affected by State

Legend 0 1,790,850

[Click For International Exports](#)

Last 30 Days



Confirm..

State

County Name

Production

Control Area Released

Birds Affected



08-Jul-24

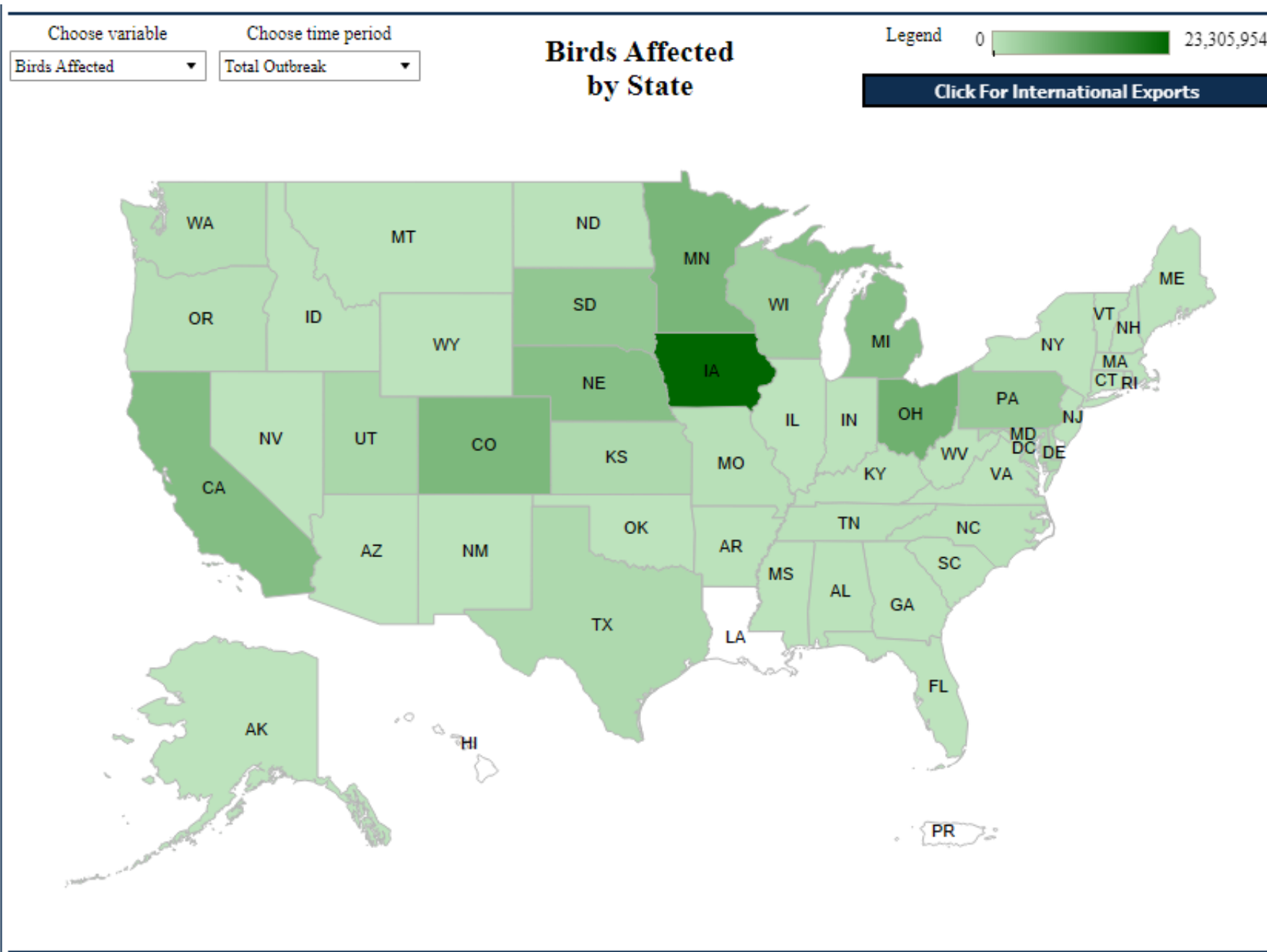
Colorado

Weld

Commercial Table Egg Layer

Active

1,790,800

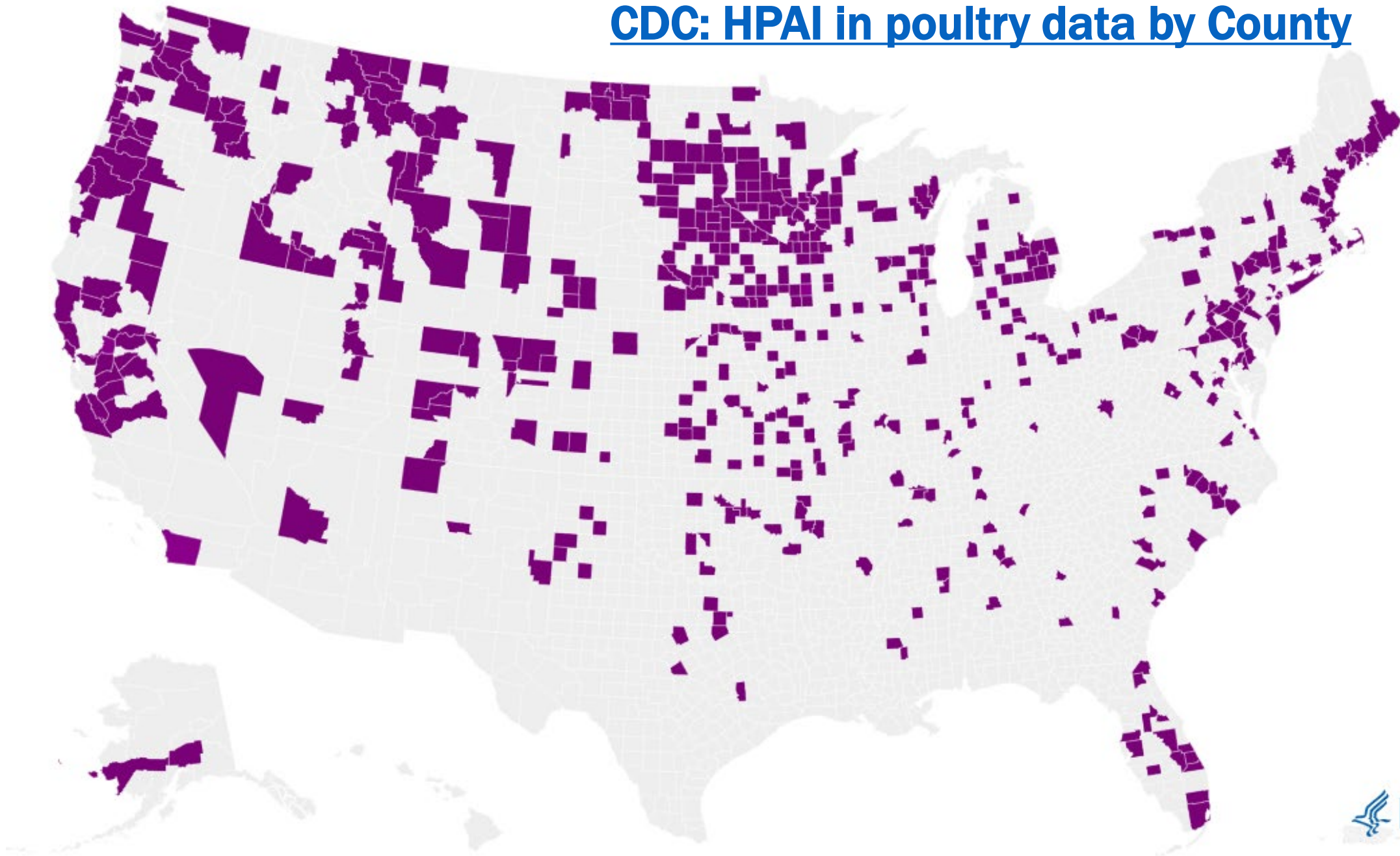


Total Outbreak

Total Outbreak:

- 95 million birds affected
- 57% of flocks – backyard
- 29% of flocks are commercial turkeys and layers
- 5% pullets and chicks
- 4% broilers

CDC: HPAI in poultry data by County



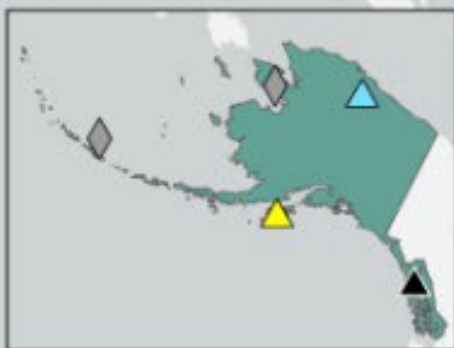


Detections of High Path Avian Influenza EA H5N1 in Mammals, May 2022 to Present

Points are approximations based on the county of detection and may represent multiple detections.



National Wildlife Disease Program
USDA/APHIS/Wildlife Services
Published July 09, 2024
Data Source: State Agencies, USDA
Map created by: Jourdan Ringenberg



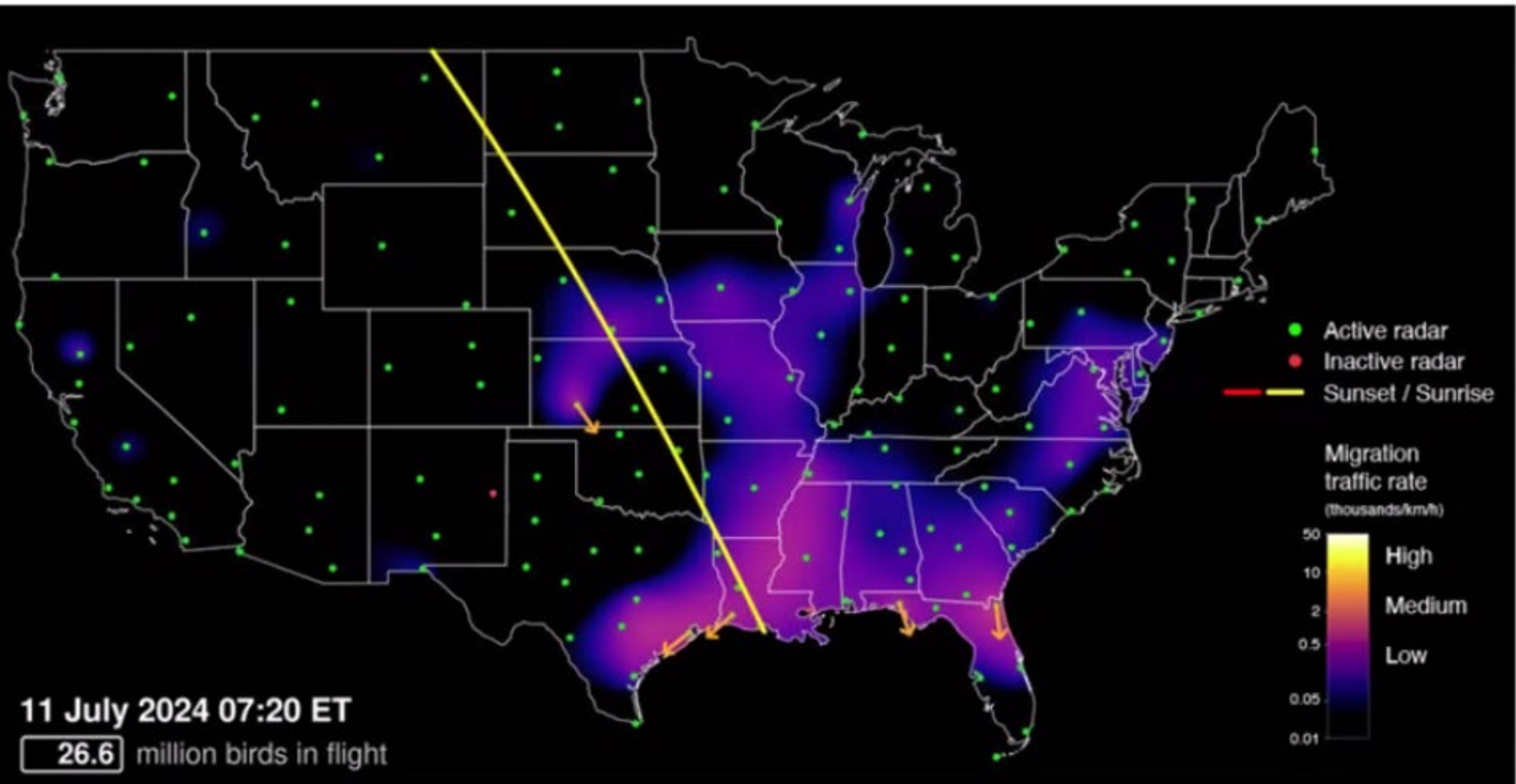
Flyway

- Pacific
- Central
- Mississippi
- Atlantic

Species

- Big cat (captive)
- Domestic cat*
- Bobcat
- Mountain lion
- Black bear
- Brown bear
- Polar bear
- Bottlenose dolphin
- Grey seal
- Harbor seal
- Coyote
- Red fox
- American marten
- American mink
- Fisher
- North American river otter
- Abert's squirrel
- House mouse
- Raccoon
- Skunk spp.
- Virginia opossum

0 800 Miles





HPAI in Livestock (i.e. dairy cattle)

USDA **HPAI Confirmed Cases in Livestock Herds**
as of July 12, 2024
Last reported confirmed detection Wednesday, July 10, 2024
Data updated weekdays by 12pm Eastern [Download Data](#)

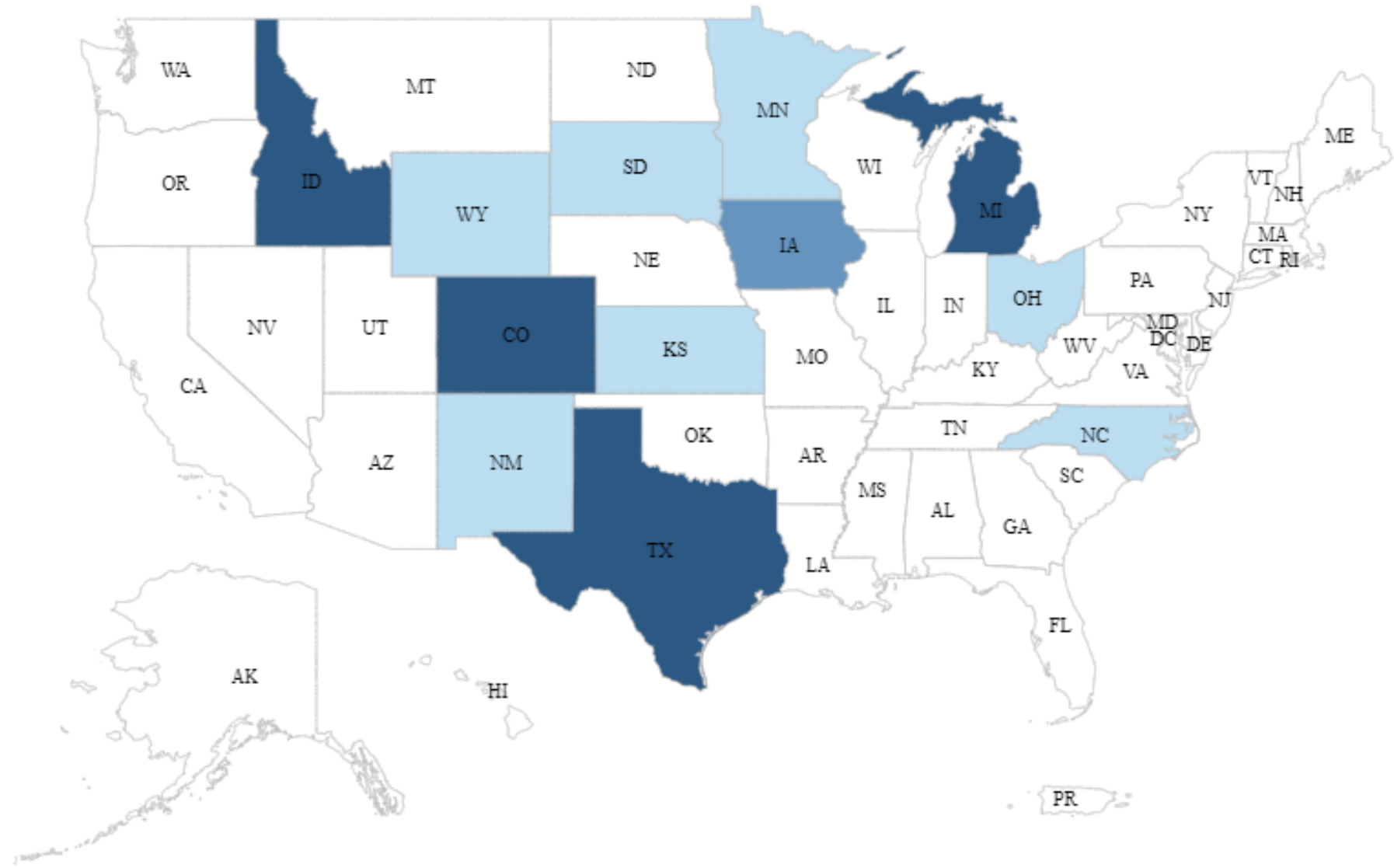
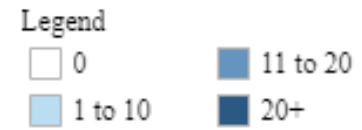
Choose time period
Total Outbreak ▼

Situational Update [Click for International Exports](#)

Confirmed Cases Total Outbreak	States Affected Total Outbreak
152	12

- Between March 24-30, 2024 – 10 cases confirmed in TX, KS, MI
- [USDA APHIS webpage](#) devoted to “livestock” outbreak (i.e. unbeknownst at the time, it turned out to be a dairy cattle outbreak). It was not known in March/April timeframe that primary transmission is through lactation (not respiratory, other fluids or means) and therefore not spreading to and among beef cattle.

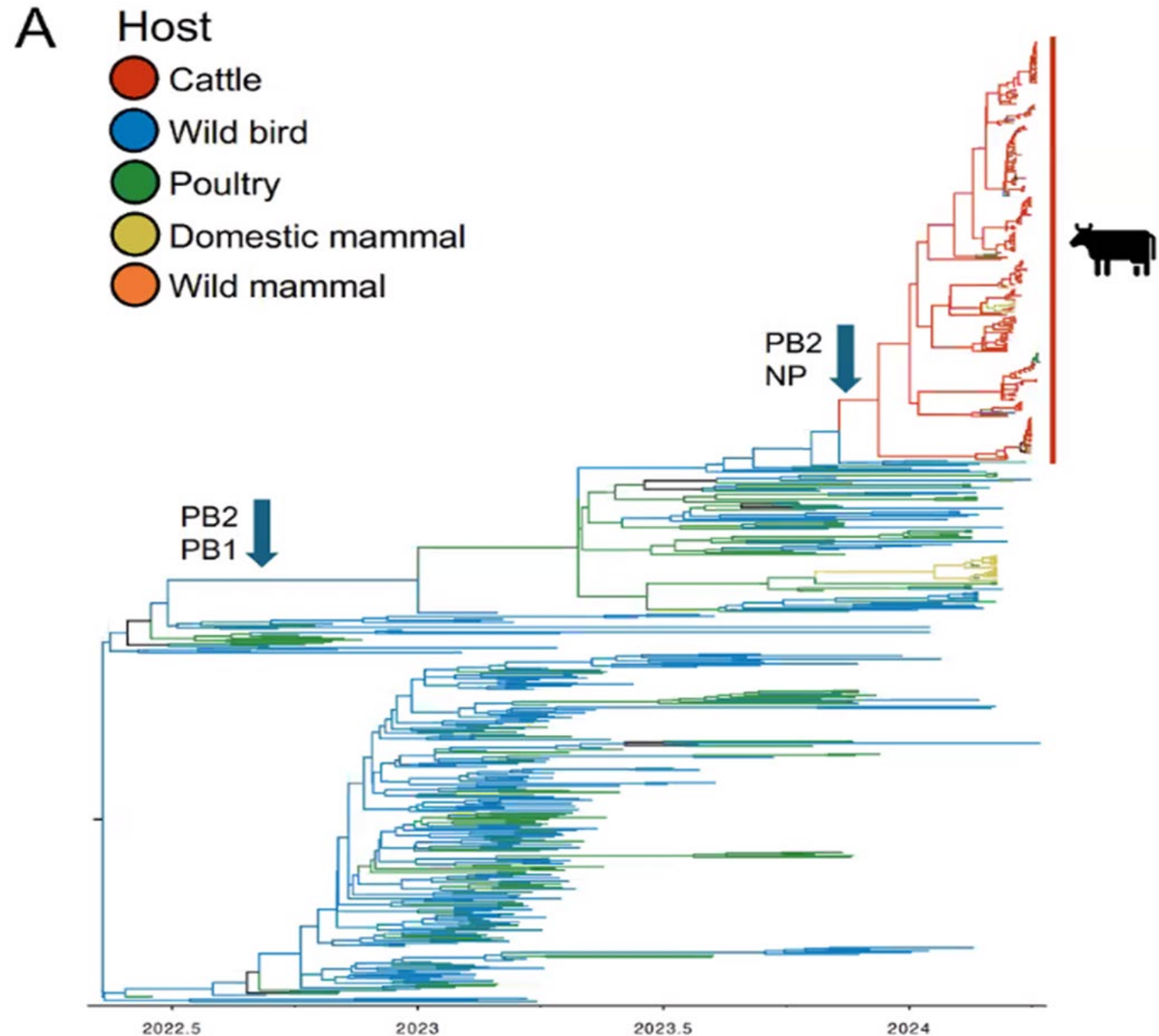
Number of Confirmed Cases by State



Total cases:
TX - 22
ID - 28
CO - 35
MI - 26
IA - 13

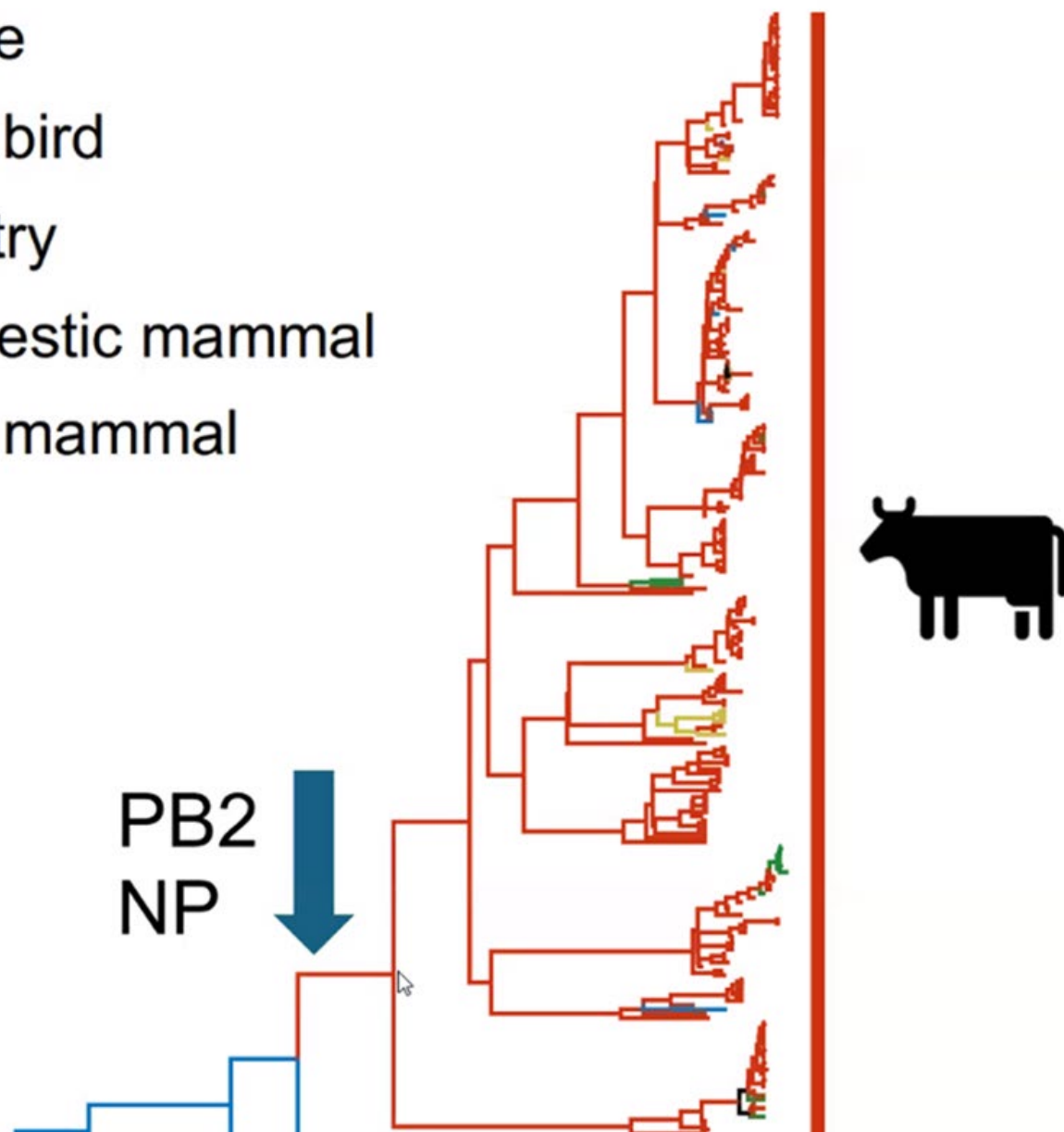
On July 12, 2024, Pennsylvania's State Veterinarian supplied this graphic compiled by USDA/CDC research from the entire outbreak. It charts the outbreak by species, time, organized by genotype of the virus in each detection.

The "cross-over" of a mutated genotype of the H5N1 virus in wild birds to dairy cattle was a **one-time event and is not a recurring event**. So far, there has been little transmission back from cattle to other species.



Host

-  Cattle
-  Wild bird
-  Poultry
-  Domestic mammal
-  Wild mammal





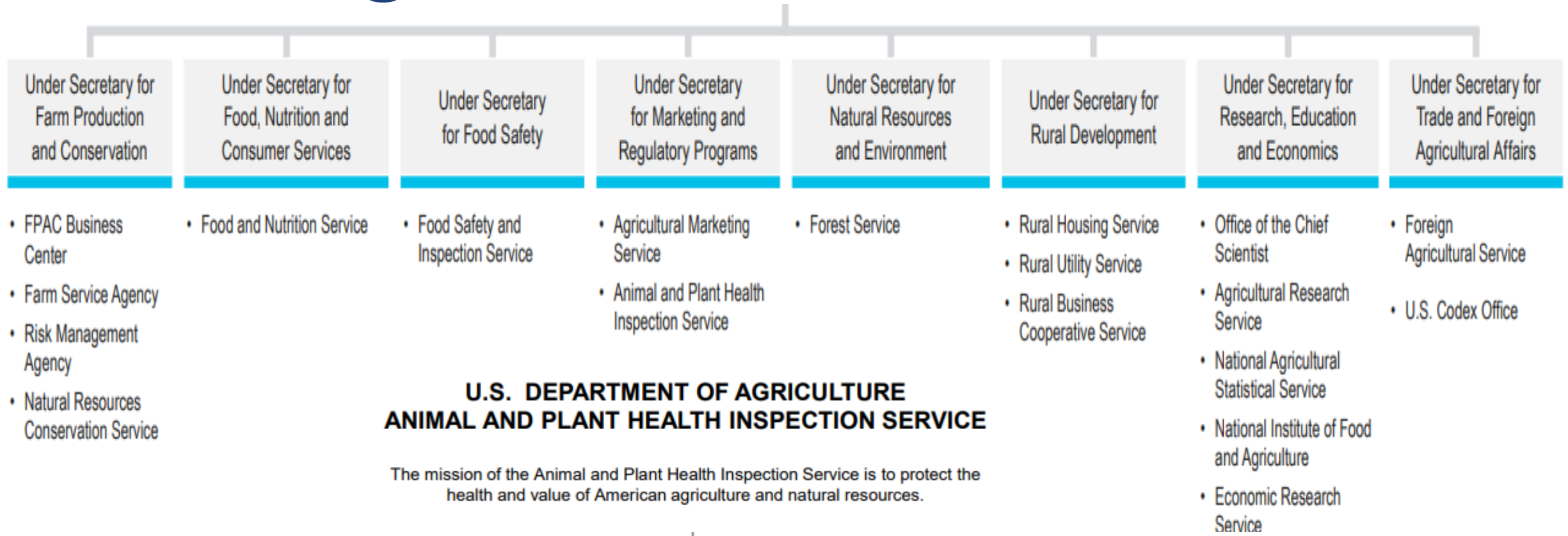
International Outbreak

- On APHIS webpage, [Animal Health Statuses of Regions](#), is a list of **temporary trade restrictions** imposed internationally due to HPAI.
 - [Australia - Avian Commodities](#)
 - [Canada—Avian Commodities](#)
 - [Canada—Hunter Harvested Wild Game Bird Carcasses](#)
 - [European Free Trade Association Countries \(Iceland, Liechtenstein, Norway, and Switzerland\)—Duck Commodities](#)
 - [European Poultry Trade Region \(excluding Great Britain\)—Duck Commodities](#) (146.82 KB)
 - [France—Avian Commodities](#)
 - [Mexico—Avian Commodities](#)
 - [Norway—Avian Commodities](#)
 - [Switzerland, Canton of Zürich—Avian Commodities](#)
 - [Switzerland, Canton of Jura—Avian Commodities](#)
- *European Poultry Trade Region, APHIS-defined:* A single region consisting of Austria; Belgium; [Cyprus](#); Czechia; Denmark; Estonia; Finland; France; Germany; Great Britain (England, Scotland, and Wales); Greece; Hungary; Ireland; Italy; Latvia; Lithuania; Luxembourg; Malta; Netherlands; Northern Ireland; Poland; Portugal; Romania; Slovakia; Slovenia; Spain; and Sweden

Federal Legal Authority for Animal Disease Control



USDA Org Chart – Where is Animal Disease Control?



U.S. DEPARTMENT OF AGRICULTURE ANIMAL AND PLANT HEALTH INSPECTION SERVICE

The mission of the Animal and Plant Health Inspection Service is to protect the health and value of American agriculture and natural resources.



According to USDA: “Our [Veterinary Services program](#) receives its authority from the laws listed below. These laws provide a framework for protecting animal health domestically and internationally.

1. [Animal Health Protection Act](#) (7 U.S.C. 8301-8317)—The Animal Health Protection Act restricts the importation, entry, and movement of animals (including livestock) and allows for the destruction or removal of animals to stop the spread of a livestock pest or disease.
2. [28-Hour Law](#) (49 U.S.C. 80502)—Under this law, animals may not be confined in a vehicle or vessel for more than 28 consecutive hours without unloading them for feeding, water, and rest.
3. [Section 203 of the Agricultural Marketing Act of 1946](#) (7 U.S.C. 1622)—Section 203 of the Agricultural Marketing Act describes the duties of the Secretary of Agriculture related to agricultural products, including inspection and certification.
4. [Section 205 of the Agricultural Marketing Act of 1946](#) (7 U.S.C. 1624)—Section 205 of the Agricultural Marketing Act authorizes the Secretary of Agriculture to cooperate with other branches of Government, State agencies, private organizations, and others involved in producing, transporting, storing, processing, marketing, and distributing agricultural products.
5. [Section 101\(d\) of the Organic Act of 1944](#) (7 U.S.C. 398)—Section 101(d) of the Organic Act authorizes the Secretary of Agriculture to purchase and test tuberculin, serums, antitoxins, or analogous products of foreign or domestic manufacture that are sold in the United States for the detection, prevention, treatment, or cure of domestic animal diseases.
6. [Swine Health Protection Act](#) (7 U.S.C. 3801-3813)—The Swine Health Protection Act prohibits feeding garbage to pigs, unless the garbage is properly treated, to prevent the introduction and spread of animal diseases such as foot-and-mouth disease, African swine fever, hog cholera, and swine vesicular diseases.
7. [Anti-Hog Cholera Serum and Hog Cholera Virus](#) (7 U.S.C. 851-855)—This law ensures the United States maintains an adequate supply of anti-hog cholera serum and hog cholera virus by regulating the marketing of such serum and virus in interstate and foreign commerce.
8. [Transportation of Equines to Slaughter](#) (7 U.S.C. 1901 note)—The Commercial Transportation of Equines to Slaughter Act sets standards to ensure the humane movement of equines for slaughter via commercial transportation.
9. [Virus-Serum-Toxin Act](#) (21 U.S.C. 151-159)—The Virus-Serum-Toxin Act regulates veterinary biologics to ensure they are pure, safe, potent, and effective.
10. [Authority To Establish Research Facilities for Foot-and-Mouth and Other Diseases](#) (21 U.S.C. 113a)—This law authorizes the Secretary of Agriculture to establish laboratories in the United States or elsewhere for research and study of foot-and-mouth disease and other animal diseases that constitute a threat to the U.S. livestock industry.
11. [Section 18 of the Federal Meat Inspection Act](#) (21 U.S.C. 618)—Among other things, Section 18 of the Federal Meat Inspection Act authorizes inspectors to issue official certificates that attest to the condition of live animals that will be exported to other countries.
12. Title II, Subtitles B and C of the [Public Health Security and Bioterrorism Preparedness and Response Act of 2002](#) (7 U.S.C. [8401](#) and [8411](#))—This Act requires APHIS to establish and regulate a list of biological agents, known as "select agents," that have the potential to pose a severe threat to animal health and safety or to the safety of animal products.”



Animal Health Protection Act ([7 U.S.C. § 8301 - 8322](#))

- “To prevent and eliminate burdens on interstate commerce and foreign commerce” – among other findings in the preamble.
- Concurrent with states’ “intra-state” authority.
- States depend upon USDA for technical assistance, research and resources/\$\$\$ (indirect mostly).
- 2014-2015 HPAI outbreak = opportunities to fine tune processes.
- COVID illustrated some analogous working relationships that are rarely seen in action.
- Authority granted is **extremely broad** – see following slides.
- Re-enacted wholesale as part of 2002 Farm Bill from provisions of various dates and statutes.

CHAPTER 109—ANIMAL HEALTH PROTECTION

Sec.	
8301.	Findings.
8302.	Definitions.
8303.	Restriction on importation or entry.
8304.	Exportation.
8305.	Interstate movement.
8306.	Seizure, quarantine, and disposal.
8307.	Inspections, seizures, and warrants.
8308.	Detection, control, and eradication of diseases and pests.
8308a.	Animal disease prevention and management.
8309.	Veterinary accreditation program.
8310.	Cooperation.
8311.	Reimbursable agreements.
8312.	Administration and claims.
8313.	Penalties.
8314.	Enforcement.
8315.	Regulations and orders.
8316.	Authorization of appropriations.
8317.	Effect on regulations.
8318.	Veterinary training.
8319.	Surveillance of zoonotic diseases.
8320.	Expansion of Animal and Plant Health Inspection Service activities.
8321.	Pest and Disease Response Fund.
8322.	National aquatic animal health plan.



Powers Granted to USDA-APHIS (§8301 – 8305)

- Grants **Import, Export** and **Interstate** movement authority
- **What regulated?** **Pests and Diseases of Livestock.**
 - Livestock: “all farm-raised animals.”
 - Disease – “the meaning given that term by the Secretary.”
 - Pest - “any of the following that can directly or indirectly injure, cause damage to, or cause disease in livestock: protozoan, plant, bacteria, fungus, virus or viroid, infectious agent or other pathogen, arthropod, parasite, prion, vector, any organism similar to or allied with any” of the foregoing.
- **How?** Issue **orders** and promulgate **regulations . . .**
 - prohibiting or restricting **importation**, entry, or movement, or
 - order the destruction, removal or disinfection,
 - “of any animal, article or means of conveyance;”
 - **“necessary to prevent the introduction into or dissemination within the United States of any pest or disease of livestock.”**



- Contains identical grants of authority re: **exportation** “necessary to prevent the **dissemination from** or within the United States of any pest or disease of livestock.”
- Contains identical grants of authority re **interstate movement** “necessary to prevent the introduction or **dissemination within** the United States of any pest or disease of livestock.”
- **Export certification**: “The Secretary may certify the classification, quality, quantity, condition, processing, handling, or storage of any animal or article intended for export.”
- **Enforcement** – If **failure to comply with order**, “take remedial action, destroy, or remove from the United States the animal or progeny of any animal, article, or means of conveyance” and “and recover from the owner the costs of any care, handling, disposal, or other action.”



Seizure, Quarantine, and Disposal - §8306(b)

- May “**seize, quarantine, treat, destroy**, dispose of, take other remedial action re: animal or progeny of any animal, article, or means of conveyance” “moving or has been moved in **interstate commerce or has been imported** or entered” **and**
- “**the Secretary has reason to believe may carry, may have carried, or may have been affected with or exposed to any pest or disease of livestock**” or otherwise is in violation of the statute, regs or orders.



⚠️ HPAI Animal Health Emergency Alert

A form of highly pathogenic avian influenza (HPAI) has been causing widespread disruption and illness in birds since first being detected in 2022. Learn more about [Detections of HPAI](#) and [HPAI Emergency Response](#).

HPAI has also been detected in domestic livestock. For the latest information, visit [Detections of HPAI in Livestock](#).

Extraordinary Emergencies - §8306 (b)

- “if the Secretary determines
 - that an **extraordinary emergency exists because of the presence** in the United States of a pest or disease of livestock and
 - that the **presence of the pest or disease threatens the livestock** of the United States,
- **hold, seize, treat, apply other remedial actions to, destroy (including preventative slaughter), or otherwise dispose of, any animal, article, facility, or means of conveyance if the Secretary determines the action is necessary** to prevent the dissemination of the pest or disease.
- “The Secretary may **take action in a State** under this subsection only on finding that measures being taken by the State are inadequate to control or eradicate the pest or disease, **after review and consultation,**” with the Governor or tribal head.
 - Also contains public notice and Federal Register publication requirements.



Compensation - §8306 (d)

- “The Secretary shall **compensate the owner** of any animal, article, facility, or means of conveyance that the Secretary requires to be destroyed under this section.”
- **Fair market value**, as determined by the Secretary (minus “any compensation received by the owner from the State or other source.”)
- “The determination by the Secretary of the amount to be paid . . . **shall be final and not subject to judicial review.**”
- Exceptions - No payment shall be made if
 - moved or handled by the owner **in violation of an agreement for the control and eradication of diseases** or pests or in violation of this chapter;
 - any animal, article, or means of conveyance that is **refused entry** under this chapter [*i.e. rejected at the border*];
 - **becomes affected with or exposed to any pest or disease** of livestock because of a violation of an **agreement for the control and eradication of diseases or pests** or a violation of this chapter by the owner.



Other powers granted

8307(b) Warrantless inspections:

The Secretary may stop and inspect, without a warrant, any person or means of conveyance moving—

- (1) **into the United States**, to determine whether the person or means of conveyance is carrying any animal or article regulated under this chapter;
- (2) in interstate commerce, **on probable cause to believe that the person or means of conveyance is carrying any animal or article regulated under this chapter**; or
- (3) **in intrastate commerce from any State, or any portion of a State, quarantined under section 8306(b)** of this title, on probable cause to believe that the person or means of conveyance is carrying any animal or article quarantined under section 8306(b) of this title.



Warrantless investigatory powers granted

§8308 Detection, Control, and eradication of diseases and pests

- “The Secretary may carry out operations and measures to **detect, control, or eradicate any pest or disease of livestock (including the drawing of blood and diagnostic testing of animals)**, including animals at a slaughterhouse, stockyard, or other point of concentration.”
- “The Secretary may **pay a claim** arising out of the **destruction of any animal**, article, or means of conveyance consistent with the purposes of this chapter.”
- The Secretary shall **compensate industry participants and State agencies** that cooperate with the Secretary in carrying out operations and measures under subsection (a) for 100 percent of eligible costs relating to cooperative programs involving Federal, State, and industry participants to control diseases of *low pathogenicity* in accordance with regulations issued by the Secretary.

Animal Health Protection Act Regs

9 CFR §

Where are the applicable regulations for HPAI?

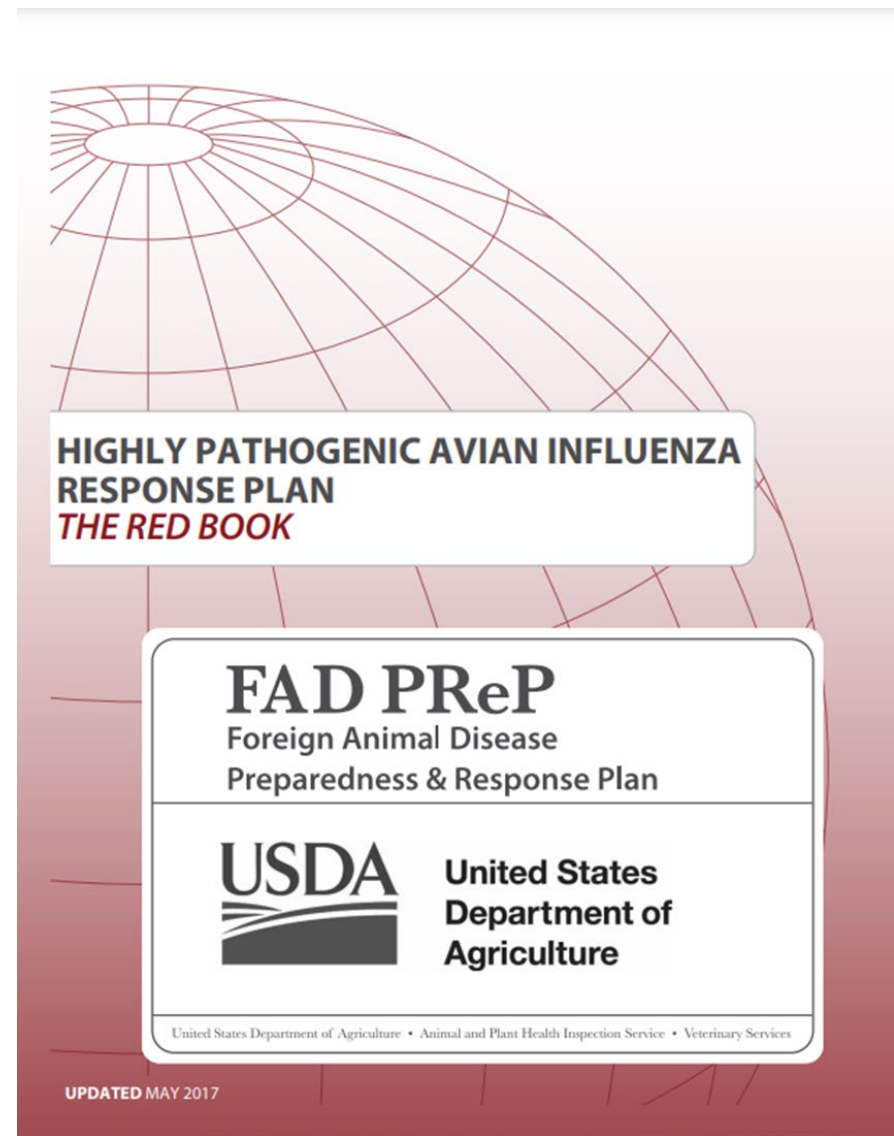
Part 56 Control of H5/H7 Low Pathogenic Avian Influenza	56.1 – 56.10
§ 56.1	Definitions.
§ 56.2	Cooperation with States.
§ 56.3	Payment of indemnity and/or compensation.
§ 56.4	Determination of indemnity and/or compensation amounts.
§ 56.5	Destruction and disposal of poultry and cleaning and disinfection (virus elimination) of premises, conveyances, and materials.
§ 56.6	Presentation of claims for indemnity and/or compensation.
§ 56.7	Mortgage against poultry or eggs.
§ 56.8	Conditions for payment.
§ 56.9	Claims not allowed.
§ 56.10	Initial State response and containment plan.

Title 9 Animals and Animal Products	Part / Section
▼ Chapter I Animal and Plant Health Inspection Service, Department of Agriculture	1 – 199
▼ Subchapter B Cooperative Control and Eradication of Livestock or Poultry Diseases	49 – 56
▼ Part 49 Rules of Practice Governing Proceedings Under Certain Acts	49.1 – 49.10
Subpart A General	49.1
Subpart B Supplemental Rules of Practice	49.10
▼ Part 50 Animals Destroyed Because of Tuberculosis	50.1 – 50.22
§ 50.1	Definitions.
Subpart A General Indemnity	50.2 – 50.16
Subpart B Dairy Cattle and Facilities in the El Paso, Texas, Region	50.17 – 50.22
▼ Part 51 Animals Destroyed Because of Brucellosis	51.1 – 51.33
Subpart A Indemnity for Cattle, Bison, and Swine	51.1 – 51.10
Subpart B Indemnity for Sheep, Goats, and Horses	51.20 – 51.33
▶ Part 52 Swine Destroyed Because of Pseudorabies	52.1 – 52.7
▶ Part 53 Foot-and-Mouth Disease, Pleuropneumonia, and Certain Other Communicable Diseases of Livestock or Poultry	53.1 – 53.11
▼ Part 54 Control of Scrapie	54.1 – 54.22
§ 54.1	Definitions.
§ 54.2	Cooperative agreements and memoranda of understanding with States.
Subpart A Scrapie Indemnification Program	54.3 – 54.11
Subpart B Scrapie Free Flock Certification Program	54.20 – 54.22
▼ Part 55 Control of Chronic Wasting Disease	55.1 – 55.25
§ 55.1	Definitions.
Subpart A Chronic Wasting Disease Indemnification Program	55.2 – 55.8
Subpart B Chronic Wasting Disease Herd Certification Program	55.21 – 55.25
▶ Part 56 Control of H5/H7 Low Pathogenic Avian Influenza	56.1 – 56.10

Foreign Animal Disease Preparedness and Response Plan - [APHIS webpage](#)

Between December 2014 and June 2015, the United States experienced its largest highly pathogenic avian influenza (HPAI) outbreak—and most serious animal health disease incident—in history. This plan was updated in August 2015 to reflect immediate changes required based on those events. Soon thereafter, in January 2016, there was an HPAI/low pathogenicity avian influenza (LPAI) outbreak in Indiana. This version of the *USDA APHIS HPAI Response Plan: The Red Book (Updated May 2017)* reflects the knowledge and lessons learned during both of these outbreaks, as well as in the recent HPAI/LPAI incident in 2017. Additionally, this version incorporates changes made in related Foreign Animal Disease Preparedness and Response Plan (FAD PReP) materials.

This guidance document represents the Agency's position on this topic and is intended solely as guidance. It does not have the force and effect of law, does not create or confer any rights for or on any person, and does not bind the U.S. Department of Agriculture (USDA) or the public. Language suggesting that this guidance is mandatory (e.g., "shall," "must," "required", or "requirement") should not be construed as binding unless the terms quote from a statutory or regulatory requirement. The information this document contains may be made available to the public. While this document provides guidance for users outside VS, VS employees may not deviate from the directions provided herein without appropriate justification and supervisory concurrence.



“THE RED BOOK”



There are multiple “Red Books.”

- Only FMD has any APHIS/AHPA regulations.

FAD	Primary type of animal affected	Highly contagious disease	Vector-borne disease	Zoonotic disease potential
Diseases with FAD PReP Response Plans (Red Books)				
Highly pathogenic avian influenza (HPAI)	Avian, others	Yes	No	Yes
Foot-and-mouth disease (FMD)	All cloven hoofed animals	Yes	No	No
Classical swine fever (CSF)	Swine	Yes	No	No
Newcastle disease (ND) (virulent ND virus)	Avian	Yes	No	Yes Minor

USDA APHIS Authorities for an FAD Incident

- APHIS (through the Secretary of Agriculture) receives its permanent and general regulatory authority to act in preventing, detecting, controlling, and eradicating any FAD or emerging disease through the Animal Health Protection Act (AHPA), 7 United States Code (U.S.C.) 8301 et seq.
- Regulations related to FAD response are found in the Code of Federal Regulations (CFR), which detail how Executive agencies interpret U.S.C.
- Relevant sections include 7 CFR Parts 1, 2, 15, and 371; 9 CFR Parts 53, 71, and 161.

This is a statement of how USDA APHIS perceives its authority in a FAD incident.

USDA APHIS Authorities for an FAD Incident

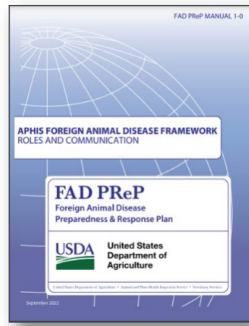
The AHPA authorizes the Secretary of Agriculture to perform the following in pursuit of FAD preparedness and response:

- Prohibit or restrict imports, exports, and/or interstate commerce;
- Implement remedial measures (i.e., destruction or removal activities, movement restrictions);
- Disinfect articles, conveyances, individuals and personal articles involved in the importation or exportation of animals;
- Declare an extraordinary emergency;
- Compensate the owner of animals, articles, facilities, or conveyances destroyed in the process of FAD eradication;
- Inspect, without warrant, persons or conveyances moving regulated animals or articles into the United States, in interstate commerce, or in intrastate commerce;
- Obtain warrants, for the purpose of entering, inspecting and seizing (if necessary) premises in the United States;
- Establish a veterinary accreditation program as well as standards of conduct for accredited veterinarians;
- Cooperate with both domestic and international government and non-government actors;
- Pay overtime for employees performing import/export services;
- Levy civil and criminal penalties against violators of the AHPA;
- Conduct investigations and administer subpoenas necessary for the administration of the AHPA; and
- Transfer funds from other USDA agencies and corporations for the arrest, control, eradication, and prevention of an FAD.

Roles and Coordination

APHIS Foreign Animal Disease Framework

FAD PReP Manual 1-0
September 2022



[Link to source](#)



Examples of State-Federal-Tribal Emergency Interventions during an FAD Outbreak

Emergency eradication effort

Twelve months or less, regulatory intervention at time of outbreak by State-Federal-Tribal authorities.

Extended emergency eradication effort

Greater than twelve months, regulatory intervention at time of outbreak by State- Federal-Tribal authorities.

National animal disease control program

Long-term regulatory control program conducted by State-Federal-Tribal authorities.

Individual State or Tribal Nation animal disease control program

Short-term or long-term, with State or Tribal Nation requirements.

Animal disease monitored with limited or no regulatory intervention

Short-term or long-term, with little or no regulatory intervention by State-Federal-Tribal authorities.

[Link to source](#)



“Agreement for the control and eradication of diseases or pests”

- Recall the phrase used in Animal Health Protection Act.
- USDA APHIS strives to conduct its animal disease emergency activities through disease control agreements with producers to authorize activities.
- The incentive to agree is indemnity and compensation.
- So far, no court enforcement of special quarantine orders (applicable to a single premise) has been necessary.

Understanding USDA Indemnity/Compensation

Process and Procedure

- [HPAI Response: Overview of Finance & Administration Procedures](#) - This document is the outline of the process to be followed in order to get paid for birds/eggs and potentially virus elimination (if not done 100% by USDA APHIS contractors).



HPAI Response

Overview of Finance & Administration Procedures

February 4, 2022

Note: These procedures are subject to change.

PURPOSE

This document provides an overview for producers and responders about the financial processes for paying poultry owners and contract growers. To provide consistency for USDA APHIS avian influenza indemnity and compensation claims, USDA APHIS is using the same administrative forms and request process for both Low Pathogenic Avian Influenza (LPAI) and HPAI. Please refer to our latest LPAI guidance document for updated guidance regarding the required forms and process for indemnity mentioned in this document:

[VSG 8603.2 - Procedures for Indemnity and Compensation Claims in Cases of H5 H7 LPAI in Poultry](#)



Understanding USDA Indemnity/Compensation (cont.)

Procedures for Indemnity /Compensation

- [VS Guidance 8603.2 Procedures for Indemnity and Compensation Claims in Cases of H5/H7 Low Pathogenicity Avian Influenza Infection in Poultry.](#)
- Within this document are mentioned forms to be used. Those forms are either found: (a) directly within VS Guidance 8603.2 discussed above; or (b) found on the APHIS webpage titled, [Highly Pathogenic Avian Influenza Emergency Response](#), under the blue drop-down menu titled “Finance and Administration Processes.”

Rates of Indemnity (payment for birds and eggs)

- [HPAI Response: Poultry Indemnity Valuation](#) (Apr. 2022) – explains the process and how valuations are set
- [USDA Indemnity Values for 2022: Commercial Table](#) (Mar. 2022) – the actual published amounts for 2022
- [VS Indemnity Values for 2022: Specialty Table](#) (Mar. 2022) – the actual published amounts for 2022

Rates of Compensation (payment for depopulation, disposal and disinfection, i.e., “virus elimination”)

- [HPAI Virus Elimination: Per-Square-Foot Rates for Floor-Raised Poultry](#)– explains the process, how amounts are set and contains the actual published amounts.
- [HPAI Virus Elimination: Per-Cubic-Yard Flat Rates for Table Egg-Laying Bird Barns and Table Egg Storage and Processing Facilities](#) - explains the process, how amounts are set and contains the actual published amounts.



USDA Disease Control Tools Available

Measures to Control and Eradicate HPAI

- Surveillance and diagnostics
- Quarantine and movement control
- Biosecurity measures
- Epidemiological investigations
- Appraisal and compensation
- Depopulation (euthanasia) of affected poultry
- Carcass disposal
- Cleaning and disinfection (virus elimination)
- Emergency vaccination (if appropriate)



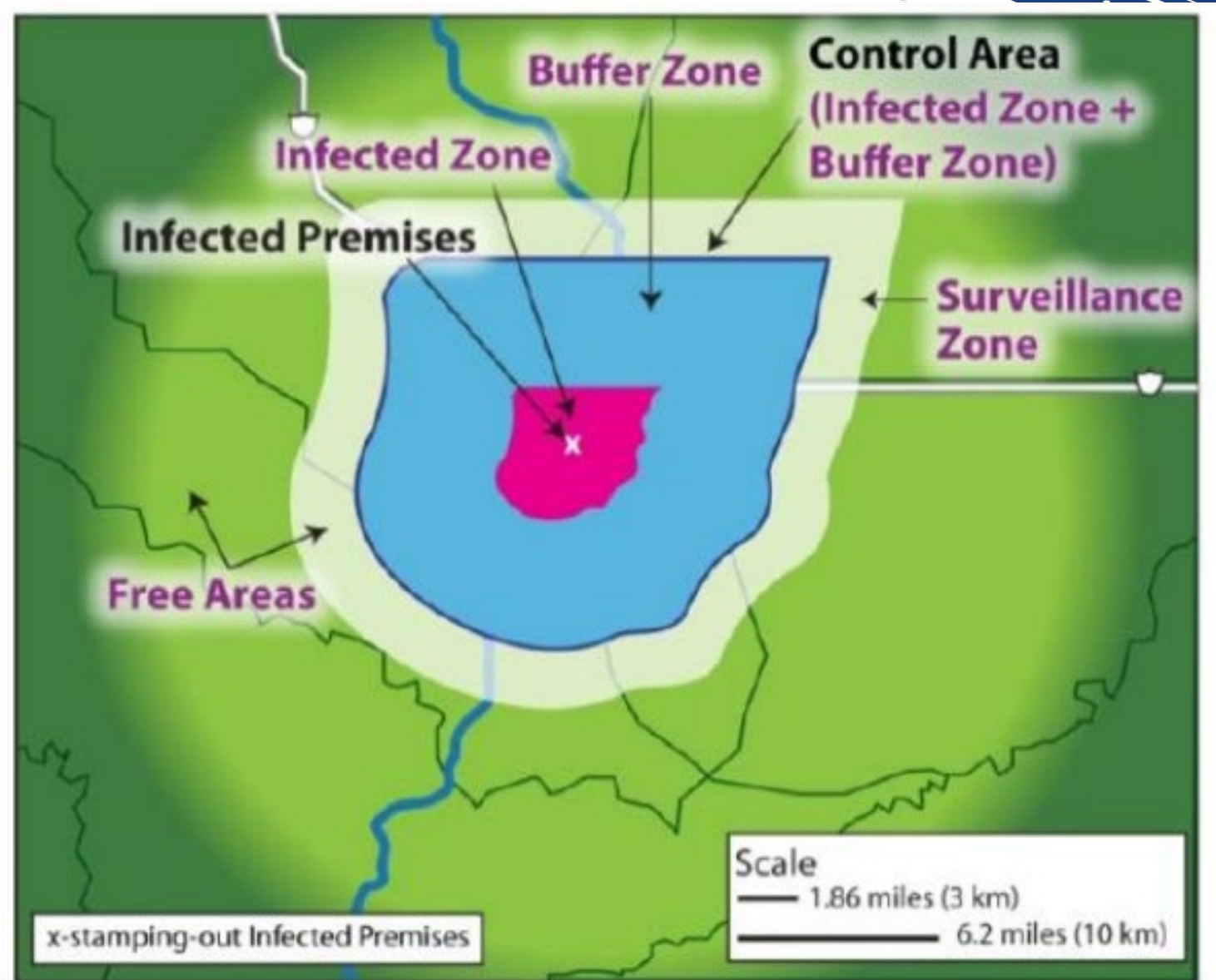
Poultry Approach

(Depop = 50M birds)

“Stamping Out Infected Premises”

The primary measure employed by USDA APHIS for HPAI in poultry was to immediately (48 hours) **depopulate** all poultry on the premises.

Coupled with a **Control Zone** to attempt to stop transmission beyond the infected premise.





Dairy Cattle Approach

- 4/24/24 – MANDATORY - [Federal Order Requiring Testing and Reporting of HPAI in Livestock](#) – mandatory testing for interstate movement of only lactating dairy cattle; mandatory report by states and laboratories of Influenza A in all livestock.
- 5/14/24 – VOLUNTARY (& clarification of above mandatory measure) - [APHIS Requirements and Recommendations for Highly Pathogenic Avian Influenza \(HPAI\) H5N1 Virus in Livestock For State Animal Health Officials, Accredited Veterinarians and Producers](#) – “This document outlines both the interstate movement requirements, as well as APHIS recommendations to limit the spread. Updated laboratory guidance, including details on required reporting, are located on the APHIS website.”
- 5/23/24 & 7/1/24 – VOLUNTARY - USDA Support for Dairy Herd Producers, [Summary Part 1](#); [Summary Part 2](#); [ELAP details](#).
- 5/30/24 – VOLUNTARY - [Dairy Herd Status Program](#) established, creating an option for freer movement of lactating dairy cattle through alternative testing schedule to the Federal Quarantine Order and creating a “monitored herd” status. Enrollment so far is 8 herds in 7 states.

Which disease control measures are chosen and why?



United States Department of Agriculture

Regulatory Intervention During an FAD Outbreak

The scope of regulatory intervention and the selection of a response strategy or strategies in an FAD outbreak will depend on the following:

- Transmission characteristics of the FAD agent
 - Rate of contagious disease agent transmission
 - Potential for zoonotic transmission
 - Number and types of susceptible animal species.
- Consequences of the FAD outbreak
 - To national security, food security, public health, animal health, the environment, and the economy
 - Regulatory impacts for owners, growers, stakeholders, and the general public.

Regulatory Intervention During an FAD Outbreak

(continued)

- Acceptance
 - Social and political acceptance of the response policy by different communities.
 - Local, State, Tribal, U.S. regional, U.S. national, North American, and international.
- Scale of the outbreak
 - Number of animals, species, and premises infected
 - The susceptible animal population density for infected or high-risk areas.
- Rate of outbreak spread
 - Numbers and types of premises
 - Numbers and types of animals
 - Rate at which each Infected Premises (IP) leads to infection of one or more additional IP.
- Veterinary countermeasures available
 - Availability and efficacy of countermeasures, such as FAD vaccines.

Regulatory Intervention During an FAD Outbreak

(continued)

- Resources available to implement response strategies
 - Capabilities and resources available to:
 - eradicate an FAD in domestic animals and
 - to control and eradicate and FAD in potential wildlife reservoirs.
- Domestic animal disease management capabilities
 - Capability, feasibility, and resources available to:
 - eradicate an FAD in domestic animals as an emergency response control as an animal disease program
 - monitor as an endemic animal disease.
- Wildlife management capabilities
 - Capability, feasibility, and resources available to eradicate, control, or monitor an FAD in wildlife reservoirs.



Thanks for attending.

QUESTIONS?





PennState Law

Center for Agricultural
and Shale Law

BONUS SLIDES

Key Abbreviations

AI	avian influenza	NRF	National Response Framework
FAD	foreign animal disease	NVS	National Veterinary Stockpile
FAD PReP	Foreign Animal Disease Preparedness and Response Plan	NVSL	National Veterinary Services Laboratories
H or HA	hemagglutinin	OIE	World Organization for Animal Health
HPAI	highly pathogenic avian influenza	PPE	personal protective equipment
LPAI	low pathogenic avian influenza	VS	Veterinary Services
N or NA	neuraminidase	WHO	World Health Organization
NIMS	National Incident Management System		



USDA Issued Order Requiring Testing, Reporting for Interstate Dairy Cattle Movement

- [Federal Order Requiring Testing for and Reporting of Highly Pathogenic Avian Influenza \(HPAI\) in Livestock](#) (effective April 29, 2024)
 - Prior to interstate movement, all dairy cattle must receive a negative HPAI test at a laboratory accredited by the National Animal Health Laboratory Network (NAHLN).
 - Owners of dairy cattle testing positive for HPAI are required to submit epidemiological information, including animal movement records.
 - Interstate movement of dairy cattle must comply with all relevant requirements and recommendations established by the USDA Animal and Plant Health Inspection Service (APHIS).
 - Laboratories and state veterinarians must report all positive diagnostic results for HPAI in livestock to the USDA APHIS.
- APHIS will cover the costs of testing including for (1) dairy cattle showing clinical signs of disease; (2) pre-movement testing; (3) producers who want to know the disease status of their animals; and (4) testing conducted on livestock animals other than dairy cattle.
- [USDA Webpage; HPAI Confirmed Cases in Livestock](#)
- [Technical Notes: Clarification to Inquiries Received on April 24 Federal Order](#) (May 7, 2024)



USDA Announced Additional Funding to Address HPAI Spread

- [Media Release; USDA, HHS Announce New Actions to Reduce Impact and Spread of H5N1](#) (May 10, 2024)
 - « ... up to \$2,000 per affected premises per month ... for producers who supply PPE to employees and/or provide outwear uniform laundering, for producers of affected herds who facilitate the participation of their workers in USDA/CDC workplace and farmworker study. »
 - « ... up to \$5,000 per affected premises ... to develop biosecurity plans based on existing secure milk supply plans. »
 - « If a producer establishes a system to heat treat all waste milk before disposal, USDA will pay the producer up to \$2,000 per affected premises per month. »
 - « Veterinary costs are eligible to be covered from the initial date of positive confirmation at NVSL for that farm, up to \$10,000 per affected premises. »
 - Additionally, the USDA will allocate \$98 million to the APHIS to assist states in implementing movement restrictions within their borders; will compensate producers for lost milk production through the Emergency Assistance for Livestock, Honey Bees, and Farm-Raised Fish (ELAP) program.



USDA Announced New Voluntary Bulk Milk Testing Pilot Program

- [Press Release; USDA Announces \\$824 Million in New Funding to Protect Livestock Health; Launches Voluntary H5N1 Dairy Herd Status Pilot Program](#) (May 30, 2024)
 - ***Emergency Funding***
 - « To help ensure the Animal and Plant Health Inspection Service (APHIS) can continue to provide critical rapid response activities, Secretary Vilsack approved the transfer of \$824 million ... to APHIS to directly support the response efforts. This funding allows APHIS to continue its critical work with state and local partners to quickly identify and address cases of HPAI/H5N1 in poultry and livestock. »
 - ***Voluntary Dairy Herd Status Pilot Program***
 - « The main benefit for farmers who choose to enroll in the Voluntary H5N1 Dairy Herd Status Pilot Program is that once they can demonstrate their herds are free of H5N1 with results from a National Animal Health Laboratory Network (NAHLN) facility, they will then need to conduct weekly tests on bulk milk from that herd to confirm that status and will be able to ship their cows at the time they prefer and without testing individual animals. »



Pennsylvania Issued HPAI Quarantine Order for Dairy Cattle; Issued Quarantine Order for Dairy Cattle Exhibitions

- [Interstate and International Quarantine Order; Restriction of Movement and Pre-Movement Influenza Testing of Dairy Cattle](#), 54 Pa. B. 2095 (effective April 20, 2024)
 - « ... dairy cattle from a State, Commonwealth, foreign nation, province or territory where [HPAI] has been confirmed in dairy cattle within the past 30 days may not be imported into, stopped off in, or unloaded in Pennsylvania ... » unless they meet certain testing requirements.
 - There are a few exceptions to the testing requirements for (1) calves under one year old; (2) dairy cattle brought in for immediate slaughter at a licensed meat establishment within 72 hours of arrival; and (3) dairy cattle with a « formalized commuter agreement » approved by PDA.
- [General Quarantine Order; Influenza A Viruses in Ruminants Exhibition of Dairy Cattle](#) (effective May 29, 2024)
 - Dairy cattle are prohibited from entering exhibition premises if (1) the cattle show clinical signs of HPAI infection; (2) have been on premises with confirmed HPAI cases in dairy cattle or domestic birds; or (3) have been on premises within a three-kilometer radius of a location with confirmed HPAI in domestic birds.
 - Dairy cattle over 18 months old must be tested within 7 days prior to their arrival on exhibition grounds
 - There is an exception to the testing requirement for dairy cattle less than 18 months prior to exhibition.



Maryland Issued Order Restricting Dairy Cattle Import

- [Order No. AH 01-2024; Governing the Movement of Dairy Cattle Infected with or Exposed to HPAI into the State of Maryland](#) (effective April 10, 2024)
 - « A person may not import, ship, or otherwise move dairy cattle into Maryland from another state or territory of the United States that has had a confirmed detection of HPAI in cattle or has an operation that is currently under investigation as a suspected premises » unless the cattle are accompanied by a certificate of veterinary inspection (CVI) or an approved health certificate or permit prepared and signed by an approved veterinarian within 7 days of transport.



New York Issued Temporary Ban on Import of HPAI-Affected Dairy Cattle

- [State Department of Agriculture Announces Temporary Import Requirements for Dairy Cattle Coming Into New York](#) (April 22, 2024)
 - Temporary ban on the import of dairy cattle from premises with confirmed cases of HPAI.
 - However, dairy cattle brought in from states affected by HPAI must show a certificate of veterinary inspection (CVI) issued within 10 days before entering New York.
 - The certificate of veterinary inspection must bear the following statement:
 - *« All animals identified on the Certificate of Veterinary (CVI) have been examined and do not originate from a premises with a confirmed detection of Highly Pathogenic Avian Influenza, or that is currently under investigation as a suspect premises. »*



USDA Allows ELAP Payments for Milk Losses from Avian Influenza

On July 1, 2024, the U.S. Department of Agriculture (USDA) Commodity Credit Corporation (CCC) published in the Federal Register a final rule ([89 FR 54331](#)) amending the [Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program \(ELAP\)](#) to “provide financial assistance to dairy producers who face milk losses due to H5N1 infection of their dairy herds.” Also [announced](#) by USDA, the program allows for a “per cow milk loss payment . . . based on an expected 21-day period of no milk production when a cow is removed from the milking herd, followed by seven days when the cow has returned to milking but produces 50% of the normal amount of production.” According to the rule, the [payment calculation](#) will be 90% of the “per head payment rate,” multiplied by the product of the “number of eligible adult dairy cows,” and the “producer’s share in milk production.” USDA states that “the final date to file a notice of loss and application for payment for eligible losses is 30 days after the end of the prior calendar year, which is January 30.” The final rule became effective and the program opened for application upon publication of the rule.